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Blueprint for the Office of the Ombudsman in Ontario

by Arthur Maloney, Q.C.

March 29, 1979.

2
1 Ontario: Ombudsman

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BLUEPRINT FOR THE
OFFICE OF THE OMBUDSMAN
IN ONTARIO

MARCH 29, 1979

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March 29, 1979.

Honourable William G. Davis, Q.C., M.P.P.,
Premier of the Province of Ontario,
Legislative Building,
Queen's Park,
Toronto, Ontario.

Dear Mr. Premier:

At the time of assuming office as Ontario's first Ombudsman I undertook to provide a Blueprint for the Office that hopefully would spell out an Ombudsman operation second to none in the world. I hope the attached document fulfills this commitment.

I originally expected to complete this document within one year of assuming office. It became apparent to me, however, that to have finalized the Blueprint as soon as that would have been premature. The complexity of the Ombudsman function, the whole problem of daily lessons to be learned and of the general process of trial and error convinced me that the Blueprint should be held off until there had been a much longer period of experience with the operation of the Office.

I hope my Blueprint will serve as a useful guide to my successor and to all future Ombudsmen in Ontario and that it will help fellow Ombudsmen in Canada and around the world.

I renew my expression of thanks to you for your courtesy and good will during the period of time I served the people of Ontario as their first Ombudsman.

Yours faithfully,

AM/D.

Arthur Maloney.

BLUEPRINT FOR THE OFFICE OF THE OMBUDSMAN
IN ONTARIO

TABLE OF CONTENTS

	<u>Page</u>
I PREFACE - BACKGROUND AND PROCEDURE	2
- The Experience to Date of the Ontario Office	3
- Public Hearings	4
- Legislative Debates	5
- Literature	6
- Meetings	6
- Visits to Other Jurisdictions	7
- Acknowledgements	9
II INTRODUCTION	13
✓ III THE ORGANIZATION OF THE ONTARIO OFFICE	29
- Interview Services	30
- Special Assistant and Legal Officer	33
- Research	36
- Institutional and Special Services	38
- General Investigations	49
- Rural, Agricultural and Municipal Services	52
- Communications	55
- Administration	57
- Ombudsman Group	57
- Case Conference	59
- Precedent Letters and Documents	68
IV THE OFFICE OF THE OMBUDSMAN FROM THE POINT OF VIEW OF THE ONTARIO PUBLIC	97
- Regional Offices	98
- Periodic Visits	104
✓ - The Ombudsman's Jurisdiction	105
- Staffing the Ombudsman's Office	106

	<u>Page</u>
- The Ombudsman's Office Must Guard Against Itself Becoming a Bureaucracy	106
- Other Recommendations	107
 V LEGISLATIVE DEBATES CONCERNING THE OFFICE OF THE OMBUDSMAN	 109
- The Province of Ontario	111
- The Province of Alberta	119
- The Province of Manitoba	120
- The Province of New Brunswick	122
- The Province of Newfoundland	124
- The Province of Nova Scotia	124
- The Province of Quebec	126
- The Province of Saskatchewan	128
- New Zealand	129
- Great Britain	131
- Australia	133
 VI THE LITERATURE ON THE OMBUDSMAN	 141
✓ The Character and Role of the Ombudsman	144
- Staff Composition	147
- The Law and the Ombudsman	149
- Relations with the Administration and the Legislature	150
- Public Relations	152
✓ - Jurisdiction	153
- Related Reform Proposals	156
 VII OMBUDSMAN OFFICES IN OTHER JURISDICTIONS	 164
- Australia - State of New South Wales	167
- Australia - State of Queensland	174
- Australia - State of South Australia	180
- Australia - State of Victoria	187
- Australia - State of Western Australia	193
- Canada - Province of Alberta	199

	<u>Page</u>
- Canada - Province of Manitoba	205
- Canada - Province of New Brunswick	210
- Canada - Province of Newfoundland	214
- Canada - Province of Nova Scotia	216
- Canada - Province of Quebec	221
- Canada - Province of Saskatchewan	226
- Denmark	232
- Federal Republic of Germany - Petitions Committee of the Bundestag	240
- Federal Republic of Germany - Parliamentary Commissioner for Military Affairs	244
- Federal Republic of Germany - State of Rhineland - Pfalz	248
- Fiji	252
- Finland	258
- France	262
- Great Britain	266
- India - State of Bihar	274
- India - State of Maharashtra	278
- Israel	283
- New Zealand	292
- Northern Ireland	296
- Norway	306
- Papua New Guinea	313
- Sweden	320
- Tanzania	326
- U.S.A. - State of Hawaii	331
- U.S.A. - State of Iowa	339
 VIII A MODEL OMBUDSMAN'S OFFICE FOR ONTARIO - CONCLUSIONS AND RECOMMENDATIONS	 346
1. Publicizing the Office and its Function	346
2. Access	350

Page

3. Staffing the Ombudsman's Office	367
✓ 4. Jurisdiction	377
5. Reception of Complaints	385
6. Investigation of Complaints	387
7. Disposition of Complaints	390
✓ 8. The Ombudsman's Relationship with the Member of the Legislative Assembly	407
✓ 9. The Ombudsman's Relationship with the Civil Service	411
✓ 10. The Ombudsman's Relationship with Ministers of the Crown	417
11. The Budget for the Ombudsman's Office	421
12. Suggested Amendments to The Ombudsman Act	425
(i) Section 1. (a) - "Governmental Organization"	425
(ii) Section 6 (1) - The Ombudsman's Salary	427
(iii) Section 12 - Special Reports	428
(iv) Section 13 - Confidentiality	433
(v) Section 14 - Non-Application of the Act to Decisions of Cabinet	437
(vi) Section 15(4)(a) - Right of Appeal Outstanding	438
(vii) Section 15(5) - Application to the Supreme Court of Ontario	441
(viii) Section 17(2) - Communication with Inmates	442
(ix) Section 19(4) - Consultation	444
(x) Section 19(6) - Referring Breach of Duty or Misconduct	445
(xi) Section 22(g) - "Other Steps or Recommendations"	446
(xii) Section 23(2) - Informing Parties of Result of Investigation	448
EPILOGUE	449

	<u>Page</u>
APPENDIX A - ACKNOWLEDGEMENTS - PERSONS CONSULTED IN THE COURSE OF THE INVESTIGATION	452
APPENDIX B - BIBLIOGRAPHY	481
APPENDIX C - REPORT OF HICKLING - JOHNSTON LIMITED DATED MAY 29, 1978 - ORGANIZATION FOR OMBUDSMAN EFFECTIVENESS	533
APPENDIX D - LETTER TO MR. JAMES RENWICK, Q.C. DATED MARCH 18, 1977	578
APPENDIX E - <u>THE OMBUDSMAN ACT, 1975</u>	587

"FOR THIS IS NOT THE LIBERTY WHICH WE
CAN HOPE, THAT NO GRIEVANCE EVER SHOULD
ARISE IN THE COMMONWEALTH - THAT LET NO
MAN IN THIS WORLD EXPECT; BUT, WHEN COM-
PLAINTS ARE FREELY HEARD, DEEPLY CONSIDERED,
AND SPEEDILY REFORMED, THEN IS THE UTMOST
BOUND OF CIVIL LIBERTY ATTAINED THAT WISE
MEN LOOK FOR."

JOHN MILTON
AREOPAGITICA

I PREFACE - BACKGROUND AND PROCEDURE

CHAPTER I

PREFACE - BACKGROUND AND PROCEDURE

On the occasion of my swearing-in as Ombudsman for the Province of Ontario on October 30, 1975, I indicated that one of the commitments that I had undertaken when I had agreed to assume the responsibilities of this new office was to draw up a Blueprint for the office of the Ombudsman that in my view would be best suited to the needs of the Province of Ontario. I indicated that it was my intention to make a study of the functions of the office of Ombudsman as it evolved in this province and extending to wherever such an office existed throughout the world with a view to producing a report which would then provide a basis not only for the organization and operation of the office in Ontario during the period of my tenure, but also discussing the role of the office in its larger aspect and suggesting directions that the office might take now and in the future. It was my hope that this Blueprint would be of assistance to the citizens of the Province of Ontario and in addition would assist offices of other Ombudsmen around the world as well as those yet to be created.

In order to assist me in the conduct of this study I engaged the services of Mr. W. Niels Ortved, a lawyer carrying on practice in the City of Toronto, and he has coordinated and supervised all of the research that has been carried out in connection with this project. Although the various aspects of this study will be detailed shortly, by way of introduction I may say that our general plan was to analyze the particular requirements of the citizens of Ontario as disclosed by the office's initial experience in this province, to ascertain how the Ontario public views the office, to canvass

everything said and written by and about Ombudsmen, to examine its operation in other jurisdictions which have created an Ombudsman, and then to attempt to extract from this body of information conclusions and recommendations referable to the peculiar situation one finds in Ontario. An expanded discussion of our overall purpose may be found in the following chapter, the Introduction to this Report.

In the course of our investigation, reference has been made to the following specific sources, all of which are more particularly described in the body of the Report:

(1) The Experience to Date of the Ontario Office

Although the legislation establishing the office of Ombudsman in Ontario was not proclaimed until July 10, 1975, and, as already mentioned, the official swearing-in did not take place until October 30, 1975, the function of the office has been carried on since the announcement of its creation on May 22, 1975. It was felt that the experience of the office in the course of its initial period of operation should be subjected to an analysis in order to identify emerging patterns and indications that some response may be warranted in terms of the office's organization and procedure. For this reason a study of the office's initial history in the period commencing May, 1975 was undertaken which includes an examination of the procedures presently in effect and an evaluation of the office's experience from an organizational standpoint. Chapter III sets out in detail the results of this aspect of the investigation.

(2) Public Hearings

Having regard to the fact that the office of the Ombudsman was created to serve all of the citizens of the Province of Ontario, it was deemed of utmost importance that the general public should be afforded an opportunity to express its views on what the office should attempt to accomplish in Ontario and how it should go about doing so. In this connection, in the period commencing November, 1975 through June, 1976 a total of twenty-five public hearings were convened throughout the province in the following centres: North Bay, Kenora, Thunder Bay, Kitchener/Waterloo, Kirkland Lake, Timmins, Kapuskasing, Cochrane, Kingston, Windsor, Sarnia, London, Ottawa/L'Orignal, Durham, Toronto - East End, Picton, Stratford, Toronto - Eglinton, Brantford, Renfrew, Pembroke, Egansville, Saulte St. Marie, Wawa and Sudbury. Publicity for these hearings was obtained through advertisements placed in the local newspapers and, where possible, announcements were made on local radio and television stations. In addition to the public aspect of these hearings wherein the members of the public were invited to make suggestions and proposals concerning how the Ombudsman and the members of his staff might be of service to their community, private hearings proceeded contemporaneously allowing citizens to register their grievances on a confidential basis.

The response on the part of the public was indicative of the broad interest in the nature of the office. At each hearing a number of persons availed themselves of the opportunity to make known their views on the organization of the office and a separate

chapter detailing their submissions is found in Chapter IV of this Report. The submissions generally reflected careful thought and preparation on the part of those who made them, and we are grateful to all of those who took the time to participate in this aspect of the enquiry. Apart altogether from the concerns expressed publicly, the extent to which individuals elected to register their complaints with the office's staff on the occasion of these hearings was of especial importance in determining a number of the conclusions and recommendations contained in Chapter VIII of the Report.

(3) Legislative Debates

In the original conception and initial organization of the office of the Ombudsman in Ontario, considerable benefit was derived from the concerns and recommendations expressed by the Members of the Legislative Assembly in the course of the debate which took place on second reading of Bill 86 - An Act to provide for an Ombudsman to investigate Administrative Decisions and Acts of Officials of the Government of Ontario and its Agencies. In Chapter III mention is made of the extent to which a number of these suggestions determined in many respects the format adopted for the organization of the office during its first year of operation. In view of the assistance derived from this debate it was thought advisable that the legislative debates in jurisdictions other than Ontario should be canvassed in the hope that further input for our investigation as to the nature and function of an optimum Ombudsman's office might be found. Accordingly, the debates of a number of other jurisdictions were examined and digested. Where a transcription of the debates existed, this aspect of the study was extended to

each of the provinces of Canada which had previously introduced such an office as well as to a number of other Commonwealth jurisdictions selected on a more or less random basis and including Great Britain, New Zealand, the national jurisdiction of Australia and a number of the Australian states. A summary of the material related to this area of study is contained in Chapter V of this Report.

(4) Literature

As may be imagined, the literature on the subject of the Ombudsman institution is voluminous. A survey of the available literature was undertaken and found to be of particular value in assessing the effectiveness of the office in other jurisdictions where it has been established. An overview of this aspect of the study is contained in Chapter VI. As well, a Bibliography setting out those items deemed relevant to those issues under consideration is annexed as Appendix B to the Report.

(5) Meetings

During the course of the investigation, a number of meetings were arranged with those who were particularly affected by the introduction of the office of the Ombudsman in Ontario in order to both acquaint them with the nature of the office and to solicit their views as to its most efficient function and organization. In this vein, meetings took place with the Deputy Ministers and the senior staff of the provincial ministries of government and with a number of heads of governmental agencies. Along the same lines, attendances by either a member or members of the office's staff at each and every

one of the correctional and psychiatric institutions in the province were arranged during the office's first year of operation. Other meetings also took place with a large number of persons who have special opinions on how the office should be designed and the contribution of all of these individuals is gratefully acknowledged at this time. Another valuable source of information and input for this Report was the first International Conference of Ombudsmen which took place in Edmonton in September, 1976. The benefit that may be derived from a discussion of mutual concerns with such a distinguished group and the value of being able to draw upon their combined wealth of experience in this field would be impossible to over-state.

(6) Visits to Other Jurisdictions

It was felt imperative that the operation of a number of Ombudsman's offices established elsewhere should be examined on a first-hand basis. Accordingly, visits were arranged to each of the following jurisdictions: Quebec, Nova Scotia, New Brunswick, Alberta, Saskatchewan, Manitoba, Great Britain, France, Israel, West Germany, Hawaii, Fiji, New South Wales, Queensland, Western Australia, South Australia, Tasmania, Victoria, New Zealand, Denmark, Sweden and Norway. The only province of Canada having an Ombudsman Act and not visited personally was British Columbia since it commenced operations subsequent to the office in Ontario. In each jurisdiction, the format followed wherever possible was to meet with the Ombudsman and his staff and elicit their responses according to a questionnaire which we had devised; we also met with those not connected with the office but who had some relation to its establishment or who would

be in a position to assist in some way in an assessment of its function in that jurisdiction. Correspondence was directed to all of those jurisdictions which we were unable to visit personally explaining the nature of our investigation and setting out those items of information which were otherwise the subject of our questionnaire. If possible, the correspondence was followed up with a meeting with the respective Ombudsmen on the occasion of the International Conference in Edmonton.

While the information gained in this latter fashion, that is, by correspondence, was important to our study, the results of the visits with other jurisdictions proved particularly valuable. No two offices are identical; each has peculiarities in its legislation, differences in its conception and in the context within which it functions so as to render it unique. Notwithstanding, speaking for our purposes, much can be learned by examining another office in actual operation, and by sitting down across from one's counterpart, discussing his approach and drawing upon his reactions to one's own peculiar concerns. Similarly, our meetings with those persons not themselves connected with the Ombudsmen's offices provided us with a spectrum of opinion and a perspective on the requirements of an Ombudsman's office if it is to be of true service to the community. A very great debt is owed to all of those who took the time to meet with us on the occasion of these various visits and equally to those who took the time to set down their thoughts in writing in response to our requests for information. Those persons with whom we met and whose assistance we are particularly anxious to acknowledge are shown in a list annexed as Appendix A to this Report. Reference may be had to Chapter VII wherein the

organization of offices in other jurisdictions is described and certain highlights of possible application to the office in Ontario are noted.

At this point a word is perhaps in order in relation to the currency of some of the data and observations pertaining to the offices in other jurisdictions. At the outset it was my intention to complete this Report within the first year of my tenure as Ombudsman. The visits described herein were commenced in August, 1975 and were for the most part concluded by March, 1976. In the period intervening since that time the release of this Report has been postponed on more than one occasion until the decision was ultimately reached to withhold its publication until after my resignation on October 9, 1978. While every attempt has been made to have the information contained in Chapter VII reflect the present situation in the jurisdictions referred to as of the date of publication it is possible that there has been some subsequent variation. What is important, of course, for the purposes of the conclusions and recommendations are the observations as to organization and procedure in these jurisdictions which stand unaffected by changes in the identity or number of an office's personnel.

Acknowledgements

The preparation of this Report was greatly assisted by a large number of individuals whose time was invariably generously given and without whom its preparation would have been impossible.

At the outset I wish to thank Niels Ortved who as I have already indicated supervised the conduct of this entire study and oversaw the preparation of this Report.

I also want to express my appreciation to all of those who assisted Mr. Ortved in various aspects of the investigations, and I single out for particular mention Glenn Hainey, Phillip Patterson, Michael-John Morgan, Richard Scrimger and Eric Singer.

The contribution of Miss Ellen Adams, Director of Special Services, in assisting in the study of Ombudsmen's offices in Australia and Mr. Gilles Morin, Director of Regional Services, in relation to the Scandinavian offices, is also underlined.

As I have also already indicated, I am especially indebted to all of those individuals who either met with us on our visits to other jurisdictions or corresponded with us and who provided us with such indispensable background information and material for this Report. I am also indebted to all of those who responded to the invitation to make their views known to me concerning the Ombudsman's office on the occasion of the public hearings, and the generous contribution of all of these persons is gratefully acknowledged.

I would be remiss in my duty if I neglected to single out for particular mention the assistance of Mrs. Nelia Woodley who worked tirelessly in connection with the production of the Report.

Lastly, I am grateful for the courtesy extended by all of those too numerous to mention whose opinions were consulted on an informal basis from time to time and whose assistance was always unreservedly and unselfishly given.

As I relinquish the office of Ombudsman after over three years in office I look back with feelings of pride and satisfaction at the great things that the magnificent staff helped me to accomplish. Between the group of us we set up an Ombudsman function for the Province that I think I can fairly say is second to none in the world. The office is expertly staffed and adequately budgeted and there is no limit to the good it can continue to do for the people of Ontario.

I looked with great satisfaction upon the appointment of the Honourable Donald Morand as my successor. As a former distinguished Judge of the Province's Supreme Court he earned the respect, the affection and the admiration of his colleagues on the Bench, the members of the Bar and the general public. He is a man of independent spirit and strong convictions, with an instinct for justice and fair play. It is a tribute to Premier Davis and the Members of his Cabinet that such a man was selected and a tribute to the Members of the Legislature that his appointment was unanimously approved.

Arthur Maloney

II INTRODUCTION

CHAPTER II

INTRODUCTION

That freedom of the individual is not absolute nor unlimited is a proposition that is unchallenged in Canada in this century. The parameters within which each of us is allowed to function are circumscribed in countless ways in the interests of the greater freedom of all citizens of our society. In this context our governments enact laws with a view to regulating our conduct toward one another which may in some way derogate from our individual freedom of movement, but which are calculated for the long-run betterment of society as a whole. At this point in our history we are witness to a trend that sees the state taking an increasingly positive role in an expanding array of hitherto unaffected areas, and the accompanying regulatory framework touches each and every one of us in a myriad and sometimes frightening number of ways. A degree of tension between the state and the individual is the inevitable outgrowth of this comparatively recent phenomenon.

If the well-being of society is to be perpetuated, public confidence in the administration of the law is of fundamental importance. Individuals must be secure in the knowledge that the powers of the state will be exercised fairly and equitably and in accordance with natural justice and the rule of law. Consistent with our traditions, if the human rights of any citizen are to be affected, as a minimum requirement that citizen must know that as a matter of right he or she is entitled to a fair hearing before a disinterested adjudicator with notice of the case to be met and a fair opportunity

in which to meet it. It is this presence of relative certainty as to the scope of the state's authority and the availability of redress in the event of arbitrariness which distinguishes a democracy most significantly and dramatically from a totalitarian regime.

Yet in practice the power and the authority of the state are administered by individuals, and by reason of human error alone mistakes and misjudgments must necessarily occur. Arbitrariness on the part of those exercising power may result from the simple day-to-day routine of the hundreds of boards and tribunals that daily carry out the process of government here in Ontario. Redress in these instances may sometimes be achieved through petitions to those persons or those bodies that have rendered the decisions, or by appealing from them to higher, albeit still government, authorities. Traditionally, we have looked to the courts as the ultimate independent overseer and protector of the rule of law, but today in many instances the supervising and controlling powers of the courts have been expressly excluded by the legislation under which a particular decision has been taken, or, for reasons which will be detailed shortly, such an alternative is neither realistic nor feasible in the circumstances. Yet it is in precisely these instances that the citizen must be assured that he or she is not without a right of appeal to an impartial arbiter. And it is in this context that Ontario has created the office of the Ombudsman.

By way of legislative background to the creation of the office in Ontario, consequent upon the recommendation of the Honourable James C. McRuer who was commissioned by the province to conduct

an Inquiry into Civil Rights in Ontario, the Legislature in 1971 enacted The Statutory Powers Procedure Act, The Judicial Review Procedure Act and The Civil Rights Statute Law Amendment Act. These measures were designed to establish a code of administrative law procedure which would guarantee the rights of the individual in relation to the many administrative processes of modern-day government within the confines of provincial jurisdiction. As the Honourable William G. Davis, Premier of Ontario, stated at the time he announced the intention of the Government to nominate Arthur Maloney, Q.C. as Ombudsman for Ontario, these several Acts:

"...gave the people of this province the most comprehensive programme for the protection of individual rights within our society that has been enacted by any jurisdiction in our country."

However, as he went on to add on that same occasion:

"As society and government increase in complexity, it becomes apparent that a number of complaints with regard to administrative matters are not within the ambit of the earlier legislation. Accordingly, we have concluded that if we are to achieve our goal of ensuring the rights of the individual in this area, the office of Ombudsman will be a necessary additional tool to the already extensive programme for the protection of civil rights which exists under the law of this province." (May 22, 1975)

The Ombudsman institution traces its history to Sweden in the early eighteenth century. In 1713 Charles IX, the Swedish monarch, appointed an "Ombudsman" to supervise the executive branch in relation to its administrative actions. In Swedish, the word

"Ombudsman" means "representative of the people" in the sense of protector of the people. The Swedish Constitution of 1809 redefined the office such that thereafter the Ombudsman reported to the legislative rather than the executive branch of government. His function was to scrutinize and, where necessary, to prosecute members of the state administration and state judiciary who "committed an unlawful act or neglected to perform official duties properly".

As the office evolved in the nineteenth and twentieth centuries, the role of the Swedish Ombudsman became less a prosecutorial one and more one whose principal responsibility was to resolve citizens' complaints against the bureaucracy. Over 100 years later Finland borrowed the concept and created a similar office in 1919, but the move that signaled the potential for such an office in a western parliamentary setting came with the adoption of the concept by Denmark in 1955. There the office was modified to function in a system which included a highly independent judiciary and an administration grounded on the principle of ministerial responsibility. In the result, the jurisdiction of the Danish Ombudsman was restricted to supervision of the actions of the public administration and to the ordering of a prosecution rather than prosecution by itself with respect to wrong-doing by public officials. The successful transfer of the institution to Denmark led to its introduction in New Zealand in 1962, Norway in 1963, and Great Britain in 1967, to name but a few.

Although the idea spread slowly at first, recent years have witnessed a dramatic growth in the Ombudsman institution through-

out the world. There are presently upwards of forty legislative Ombudsman offices possessing the criteria considered essential by the International Bar Association in countries as diverse as France, Israel and Papua New Guinea. All mainland Australian states now have an Ombudsman and the Australian commonwealth government has similarly moved to create such an office. In Canada, all of the provinces except Prince Edward Island now have an Ombudsman Act. At the federal level in Canada the office exists in the Commissioner of Official Languages, the specially constituted Office of Correctional Investigator or Ombudsman for federal prisons, and the Privacy Commissioner; in addition, legislation has been introduced to establish a national Ombudsman. Standing alone, this apparent popularity is a significant indication that the Ombudsman has proved a successful and effective means to humanize government and to smooth the rough edges of relationships between the citizen and government administrators.

What, in brief, is an Ombudsman? To the layman, he is a watchdog over the bureaucracy of government. To be more precise, there are a host of different definitions of the office, none of which is accepted as an absolute, but for present purposes the definition settled upon by the International Bar Association is more than satisfactory. It defines the office of Ombudsman as follows:

"An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion and who has the power to investigate, recommend corrective action, and issue reports."

Before considering the efficacy of an Ombudsman, an appreciation of the limitations of traditional mechanisms for adjusting citizens' grievances apart from the office of the Ombudsman is of assistance in understanding the outstanding success of this institution. To some extent in the past and more so recently, one aspect of the function of individual members of elected assemblies has always been to receive and to attempt to resolve the complaints of their constituents. Unfortunately, this avenue of appeal has not always proved satisfactory, not least because of the limited time and staff available to individual members, but also due to the fact that the member's powers of access to information are often really no greater than those of the complaining citizen. Another traditional mechanism for adjusting grievances has been the court. There is no doubt that the courts play a vital role in the correction of abuses by government, but in spite of our excellent legal aid plan which has itself become a model for other provinces, litigation can still be expensive, exacerbating and often protracted and slow. As Bernard Frank, the Chairman of the Ombudsman Committee of the International Bar Association, states:

"The Ombudsman gives the citizen an expert and impartial agent without personal cost to the complainants, without time delay, without the tension of adversary litigation, and without requirement of counsel".

Thus, the Ombudsman enjoys the advantages of being quick-moving, inexpensive and uncomplicated. In addition, he is impartial and not liable to possible obstructionism on the basis that his actions are motivated by political considerations. He is granted extensive powers of investigation including the power to examine

files, subpoena documents and conduct hearings under oath, powers not possessed by the legislature's elected members. Although an Ombudsman's power is restricted to making recommendations, his scope in this regard is virtually unlimited; whereas courts of law in reviewing administrative decisions are often precluded from a reconsideration of the case on its merits, the Ombudsman's recommendation may range from an expression of opinion that a particular decision was wrong up to and including the view that the process for arriving at such a decision should be changed or the law itself under which the decision was taken should be amended. In this sense, the Ombudsman institution may be said to fill the gap where developments in our common law tradition have been notably deficient. To use the words of New Zealand's Sir Guy Powles, acknowledged as the Dean of English-speaking Ombudsmen, "the Common Law was never a very good vehicle for an attack upon the Crown".

Although it has been stressed that the Ombudsman is restricted to making recommendations, it should not be assumed that he is thereby powerless to effect change; indeed, experience would indicate that it is this very inability to enforce his decision that is at the root of his power. Because an Ombudsman cannot coerce officials of government to comply with his recommendations, these officials are not inclined to deny him their cooperation in the course of his investigation. The experience of all Ombudsmen has shown that in almost all cases a genuine attempt will be made on the part of the government officials concerned to review and reassess an administrative decision in the perspective of any new light cast upon the situation by the Ombudsman, very often result-

ing in a change in that decision to the advantage of a complainant. In this sense, the Ombudsman's role is more akin to that of a diplomat than a policeman. In that minority of cases where a recommendation is resisted, and a confrontation develops, because of the nature of the office and the almost invariable public support upon which it is able to draw, particularly where there is a strong and supportive press, any government is hard put to ignore the Ombudsman's recommendation, be it of a major or minor nature.

There is one further, albeit less tangible, advantage which confirms the value of an Ombudsman. This quality was succinctly stated in an address given on the occasion of the International Conference of Ombudsmen in 1976 in Edmonton by Dr. I.E. Nebenzahl, Israel's Commissioner for Complaints from the Public (Ombudsman):

"Today's Ombudsman is a profoundly democratic institution. With the right to complain, the individual citizen is given a means of directly influencing the administration, more specifically and, in its own time and place, more powerfully, than by casting his vote as one of many in an election. This element of direct democracy may account for some of the appeal of the Ombudsman idea."

Dr. Nebenzahl continued and this incidentally brings us back to the point with which this chapter began:

"...It is part of a good man's well-being and peace of mind to know that the society to which he belongs does justice to his fellow man also...Therefore the existence of an institution which helps citizens to obtain justice in their dealings with the powerful authorities has a value for us, even while we do not need it ourselves."

Ontario is governed in accordance with the principles of British Parliamentary democracy. All members of the Provincial Cabinet are sitting members of the Legislative Assembly. Each Minister is accountable in the Legislature for the conduct of the affairs of his Ministry. The day-to-day management of the business of a Ministry is in the hands of a Deputy Minister, a highly trained career civil servant. The Ontario Ombudsman is a parliamentary type Ombudsman, on the New Zealand model, appointed by the cabinet on the address of the Legislative Assembly as an officer of the Legislature and completely independent of the executive branch of government. He reports on the affairs of his office to the Assembly through the Speaker. In practice, his reports are considered by a special committee of the Legislature. In a sense, the ability of the Ombudsman to report to the Legislature is another way in which the executive branch of government may be made accountable for its decisions to the elected representatives of the people.

The function of the Ombudsman, as set out in the Act, "is to investigate any decision or recommendation made or any act done or omitted in the course of the Administration of a governmental organization and affecting any person or body of persons in his or its personal capacity." To understand the scope of the Ombudsman's jurisdiction, one must consider the definition of "governmental organization" contained in the Act, which is "a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

Continuing for a moment regarding the specifics of the Ontario Ombudsman legislation, provisions of that Act respecting appointment,

tenure, staffing and financing ensure the independence of the Ombudsman. Except for lack of jurisdiction, his proceedings and decisions are not open to challenge in any court, and so long as he carries out his functions in good faith, no civil suit or prosecution may be brought against him or his staff. In order that the effectiveness of the Ombudsman is ensured he has been granted broad powers to compel the giving of evidence, to enter upon any premises occupied by a governmental organization and to delegate his powers to persons holding office under him. Furthermore, the testimony of any person given in the course of any inquiry or proceedings before the Ombudsman is protected and no prosecution may be brought against any person for complying with the requirement of the Ombudsman respecting the giving of testimony.

Investigations are initiated upon receipt of a complaint, either directly from the person affected or through the intercession of an elected Member of the Assembly (on behalf of a constituent) or upon the Ombudsman's own initiative. Letters addressed to the Ombudsman by inmates of provincial jails, detention centres or correctional institutions or patients of provincial psychiatric facilities must be forwarded to the office unopened. Before investigating any matter the Ombudsman is required to inform the head of the governmental organization affected of his intention to investigate, and the investigation is to be conducted in private to guarantee confidentiality. Before making any report or recommendation which may adversely affect any governmental organization or person the Ombudsman must afford to such organization or person an opportunity to present his side of the case.

Following investigation, the Ombudsman may recommend to the governmental organization appropriate remedial action including re-consideration of decisions, rectification of omissions, alteration of practices, re-consideration of existing laws and generally anything which will lead to fair, just and responsive administration. If his recommendations are not followed the Ombudsman may report to the Premier and ultimately to the Legislative Assembly. The Act provides that the Ombudsman is required to inform complainants of a recommendation to the administration or a decision not to investigate or not to proceed further with the investigation of a complaint. In addition, he is required to report annually upon the affairs of the office to the Speaker of the Legislative Assembly.

It has been a principle of long-standing both of our country and of our province that individual rights are best protected by legislation providing procedural safeguards, and consistent with that principle the Ombudsman Act does not give the Ombudsman jurisdiction where the law has provided a right of appeal, review or other adequate remedy until after the time for appeal has expired or the appropriate processes have been exhausted. He does not have the right to review decisions of Judges, the functions of any court of law, a decision, recommendation, act or omission of any person acting as legal adviser or counsel to the Crown in relation to any proceeding and the deliberations and proceedings of the Executive Council or any committee thereof, as they are exempted from the operation of the Ombudsman Act. It is the responsibility of the Attorney General to certify that the giving of any information or the answering of any question or the production of any document or thing would be injurious to the public

interest or that it might interfere with or impede investigation or detection of offences or might involve the disclosure of the deliberations of the executive council. In such circumstances, there would be no power to compel the giving of evidence.

The foregoing highlights of the Ontario Ombudsman legislation serve to introduce the nature and scope of the office's function. The description could apply equally, with some variation, to Ombudsmen offices created in any one of a number of other jurisdictions. It conforms essentially to what may be called the "classic" plan. But Ontario is a unique jurisdiction, uniquely situated and its population uniquely constituted. Are there variations in this "classic" plan that might be usefully adopted in Ontario having regard to its unique features? Additionally, are there organizational procedures or innovations with which the office might experiment with a view to better enabling the office to serve the citizens of the province? These are the questions to which this study has been directed.

Before going on to consider these issues, it is perhaps appropriate to outline in a summary fashion the physical nature of the constituency which the Ontario Ombudsman's office has been created to serve. The total land mass contained within Ontario's boundaries is 412,582 square miles. The population presently numbers approximately 8,500,000 people. There are many large urban centres with a population in excess of 50,000 persons spread throughout the

province. Distances between urban centres are immense. The province stretches 1,000 miles from east to west and 1,000 miles from north to south. From Kenora, which is located in the north-west part of the province, to Toronto, the capital, requires a land journey of close to 1,200 miles.

The population of the province is far from homogeneous. It is comprised largely of distinct ethnic groups - 52% of the immigrants who have come to Canada since the last war have made Ontario their home. Today one in four residents of Ontario is foreign-born. Of these, the largest group originated in the British Isles and the second largest in France; a remaining 3,000,000 citizens are German, Italian, Greek, Polish, Russian, Ukranian, Czechoslovakian, Hungarian, Dutch, Armenian, Croatian, Serbian, Slovenian, Portuguese, Turkish, Asian and West Indian. At the last Canadian concensus, Ontario's native Indian and Eskimo population numbered 63,170. These groups have been encouraged to maintain and perpetuate all of the distinctive features of their cultural and ethnic heritage with the result that we are left with a demographic "mosaic" rather than a "melting-pot".

The provincial budget for 1978-1979 amounted to approximately fourteen billion five hundred million dollars. The civil service required to operate the machinery of government numbers some 81,184 men and women. There are 24 ministries of government and provincial secretariats and between three hundred and five hundred boards, agencies and commissions whose actions and decisions are within the Ombudsman's jurisdiction. The province administers 52 jails,

reformatories and correctional centres and 12 psychiatric facilities. In addition, there are some 8 juvenile detention centres and training schools which are similarly within the Ombudsman's purview.

"An Ombudsman cannot be bought off the peg; he must be made to measure". So said Professor S.A. de Smith who was engaged to design an Ombudsman system peculiarly suited to Mauritius. This is also the purpose of this investigation - to suggest an Ombudsman plan peculiarly suited to the province of Ontario, and, indeed, second to none anywhere in the world. The details spelled out in the foregoing paragraphs will serve to outline the nature of some of the problems to be confronted. With a view to further defining the issues and arriving at recommendations all of the sources described in the Preface were canvassed, including public hearings, legislative debates, the literature on the subject, the organization and performance of offices in other jurisdictions, and, of course, the initial period of operation of the Ontario office. Arising out of this investigation a number of conclusions are suggested which, if implemented, it is hoped will result in a more responsive and more effective Ombudsman's office to serve the citizens of the province of Ontario. Furthermore, it is hoped that the Ontario experience and the conclusions and recommendations arrived at in this Report will be of benefit to others interested and involved in this field wherever they might exist.

We have set ourselves an ambitious task. And while we have concentrated our study on the institution of the Ombudsman, nonetheless one should not assume it to be our belief that however

structured, that institution can ever serve as more than one avenue among many on the difficult road to social and administrative justice. It is not a panacea; as Walter Gellhorn points out:

"An Ombudsman cannot create a solid structure of public administration, he can only do a bit of patching and sewing of minor rents in a basically sound fabric."

In the last analysis, neither the office of the Ombudsman nor any technique employed by government is a substitute for a committed, intelligent and vigilant citizenry. Our times have taught us that the greatest danger to good government comes not from without but from within; the most dangerous tyranny has always been apathy. In the end, good government, the protection of individual freedoms, is the responsibility of every citizen, and cannot be delegated to any single official.

III THE ORGANIZATION OF THE ONTARIO OFFICE

CHAPTER III

THE ORGANIZATION OF THE ONTARIO OFFICE

At the time of the appointment of Arthur Maloney, Q.C. as Ombudsman for the Province of Ontario there was, of course, no existing Ombudsman's office. Clearly the Ombudsman and his secretary were not going to be able to cope with the anticipated avalanche of complaints that it was expected the creation of this office would generate. The problem became one of how to design and structure such an office so that the eventual volume of approximately 7,000 complaints and 8,000 inquiries received annually were analyzed, investigated and resolved as efficiently and expeditiously as possible. What was particularly to be avoided was the Ombudsman's office becoming a bureaucracy in the manner of that which it had been established to investigate.

In the result, a system of departments or "directorates" was settled upon as a means of concentrating expertise in designated areas yet allowing for the smoothest possible passage of complaints through the office. Initially, the areas of specialization which had been defined within the first six months of the Ombudsman's appointment were as follows:

- Interview Services
- Special Assistant and Legal Officer
- Research
- Institutional and Special Services
- General Investigations
- Rural, Agricultural and Municipal Affairs
- Communications
- Administration
- Ombudsman Group

The essential routing of a complaint through these directorates is detailed in Figure 1. This diagram obviously gives only a very general outline of how the office was initially structured, how it responded to outside influences and how the majority of complaints flowed through the organization. The detailed responsibilities of each area, and how each contributed to the office's overall purpose, will be reviewed in the following pages. With regard to this description, it should be borne in mind that the attempt to follow the routing of a complaint deals with complaints generally and would not necessarily apply in each individual case as the very nature of what an Ombudsman's office is all about simply precludes total routinization. The basic structure of this system has remained intact up to the date of the publication of this Report although certain important alterations did take place in 1978. An outline of these more recent organizational changes resulting from a management consultant's report handed down by the firm Hickling - Johnston Ltd. will be deferred until the end of this Chapter.

INTERVIEW SERVICES

The initial trickle of complaints, which began as soon as the Ombudsman's appointment was announced, quickly became a deluge. The Directorate of Interview Services was established as the primary reception centre for new complaints that did not come by way of correspondence, a focus of initial contact between a complainant and the office. Its main function was to reduce to writing, as required by Section 17(1) of the Act, the salient facts pertaining to each case in those cases where the complainant come directly to the office for an interview or if the office went on tour.

As intimated in Chapter II, the range of matters coming within the Ombudsman's jurisdiction by virtue of The Ombudsman Act is very wide. The populace of Ontario brought to the office their manifold problems, many of which the Ombudsman had no formal power to consider. While some citizens brought some complaints against agencies of the provincial government, others came with complaints against other governments, other organizations and other individuals. Some came with well-documented briefs which specified the history and nature of their problems in the most thorough and precise detail; others came with only the vaguest recollection of events leading to their complaint. Some spoke articulately while others knew little or no English or French and could only express their grievance in the most rudimentary of phrases. Some were rational and objective when describing their problems; others were passionate and emotional, often breaking into tears when describing their plight. Some understood the structure and functioning of the provincial government in the most explicit detail; others had only a vague but intense conviction that they were the victims of bureaucratic injustice or unfairness. Some of those petitioning the office were among the well-to-do of the province while others eked out a bare existence in the furthest corners of the province. All of these people could ask the Ombudsman's assistance, and all of them did.

And, by and large, the staff of the Directorate of Interview Services were the first personnel of the Ombudsman's office that these complainants met, since all incoming telephone calls and new "off-the-street" complainants were initially directed to Interview Services. Thus,

each interviewer had to be ready and able to meet any type of complainant with any type of complaint at any time and any place, and the Directorate had to have a multilingual staff to call upon at all times. The ability to lend a sympathetic ear to each and every complainant was but one of the interviewer's responsibilities. The Ombudsman was particularly insistent that an attitude of patience and courtesy had to be displayed by these members of the staff who met with members of the public. Discourtesy must remain a cardinal sin for anyone in the employ of the Ombudsman.

Beyond hearing what the complainant had to say, the interviewer often had to understand and draw out what the complainant was trying to say, but which had been left unsaid either because of language difficulties or because the complainant did not fully understand his or her own particular problem. The interviewer had to have a comprehensive understanding of the Ombudsman's jurisdiction so that, if possible, a prompt decision could be made as to whether or not the Ombudsman was competent to deal with the problem; if no jurisdictional determination could be made readily, the matter would be referred for research. For those complaints which were outside the Ombudsman's jurisdiction, the interviewers took pains to ensure that the complainant was referred to another official or functionary who would be in a position to assist the individual. In the course of the first two years of the office's existence, the Directorate of Interview Services compiled an exhaustive listing of hundreds of referral agencies and services.

Problems of geography were resolved in two fashions. Complainants unable or unwilling either to write to the office or attend

at the office could communicate their concerns by telephone. A system was devised whereby the complainant could leave his or her name and telephone number and a call would then be returned to that person from the Ombudsman's office using a government "tie" line thereby eliminating or at least reducing any cost to the complainant. In order to reach those persons located some distance from Toronto and unprepared to either write or telephone the office a series of hearings was instituted which is still on-going. On the occasion of these hearings members of the Ombudsman's staff would make themselves available to receive complaints from those in the community and the surrounding neighbourhood. Interviewers from the Directorate of Interview Services were, naturally, part of each hearing group once this programme was underway. In September, 1976, this Directorate assumed responsibility for the conduct of all such hearings.

Finally, of course, once any interview was completed, the interviewer had the responsibility of preparing a report on the case and, unless the matter had been immediately referred, this report was sent to Records for the formal opening of a file on the matter, and the entire file was then passed to either the Special Assistant and Legal Officer or the Directorate of Institutional and Special Services for further action as will be described.

SPECIAL ASSISTANT AND LEGAL OFFICER

The primary responsibility of the Legal Officer's Directorate was to initiate action, once a file had been formally opened, on all complaints that were not immediately referred elsewhere by Interview Services nor within the area of responsibility of the Directorate of Institutional and Special Services (to be discussed below).

The scope of activity undertaken on a file by the Special Assistant and Legal Officer usually began with a jurisdictional determination. If a complaint was found to be beyond the Ombudsman's legal competence, the Legal Officer's staff would so inform the complainant in a letter which briefly recapitulated the original grievance, outlined the Ombudsman's jurisdiction and why the complaint lay outside this jurisdiction and, finally, referred the complainant to an agency or agencies that could assist in resolving the difficulty; in this area, the Special Assistant and Legal Officer's Directorate cooperated closely with Interview Services in the development of a referral system.

Even though some complaints were directed against a governmental organization, they nevertheless fell outside the Ombudsman's jurisdiction for a number of reasons stemming from other sections of The Ombudsman Act. It was more often than not the Legal Officer's staff who had responsibility for assessing the impact of these restrictions on each particular complaint. For example, Section 15(4) (a) of the Act requires that all rights of appeal, objection, hearing and review must be exercised before the Ombudsman can entertain a complaint; the Special Assistant and Legal Officer's staff reviewed and catalogued these rights of appeal and limitation periods and determined their applicability to individual complaints.

If the substance of a complaint concerned matters of doubtful jurisdiction, the file was transferred to the Research Directorate for review and a jurisdictional determination and the complainant was so advised of this necessity for research. After Research had determined the Ombudsman's jurisdiction in a particular matter, the file

would be returned to the Legal Officer's Directorate where it would be either closed for want of jurisdiction or otherwise prepared for investigation.

This latter group of complaints, those within the Ombudsman's jurisdiction, necessitated a letter to the head of the appropriate governmental organization advising of the Ombudsman's intention to investigate. This letter, sent pursuant to Section 19(1) of The Ombudsman Act, not only briefly outlined the complainant's contention but also invited the head of the governmental organization to advise the Ombudsman of the governmental organization's position on the matter. Concurrently a letter was sent to the complainant advising of the action that had been taken. By way of further clarification of the foregoing a sample of a typical Section 19(1) letter has been included along with a number of other precedents to be found at the conclusion of this Chapter.

Almost without exception, the governmental organizations so advised in accordance with Section 19(1) provided the Ombudsman with a statement of their positions on such complaints. Each such response was reviewed by the Legal Officer to determine whether the matter could be resolved at this stage or whether it required further investigation. In the latter case, the Special Assistant and Legal Officer's staff prepared guidelines for the scope and initial parameters of the investigation before forwarding the file to the General Investigations Directorate.

The actual work of the Special Assistant and Legal Officer group was far less straightforward than the above outline suggests. It was often necessary to obtain considerable additional information,

either from the complainant or from other sources, before a jurisdictional determination could be made. It was also the case, albeit less frequently, that some citizens documented their complaints to an elaborate degree nearly inundating the office with documents in support of their position. The task of reviewing these materials and extracting the essence of the complaint in such instances was responsibility of the Legal Officer's staff.

RESEARCH

In 1975 The Ombudsman Act was a new and unfamiliar statute, even to those whose job it was to discharge the functions set forth in the Act. Within the context of Ontario's parliamentary system, it must be remembered, the Ombudsman institution was a novel appendage grafted onto the existing administrative structure. The Ombudsman's power to investigate was clearly not unlimited but, it soon became only too obvious, the precise limits of his power were quite obscure in a number of areas.

In particular, Section 15(1) of The Ombudsman Act set forth the Ombudsman's function, "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity". The Ombudsman's scrutiny is thus to be directed toward every "governmental organization" which is defined under Section 1(a) of the Act to be a "ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof".

The primary responsibility of the Research Directorate was to determine whether each new organization complained about was in fact a "governmental organization" as defined by the above Section. While the jurisdictional determination was relatively simple when the organization complained against was obviously a board or a commission, such as the Ontario Labour Relations Board or the Ontario Police Commission, there were also other bodies, such as the Ontario Educational Communication Authority or the Alcoholism and Drug Addiction Research Foundation, which raised complicated questions requiring substantial research. The Research Directorate prepared a comprehensive memorandum on each organization which became the subject of jurisdictional research and these memoranda subsequently served as an aid to the Interview Services and Legal Officer's staff allowing them to make jurisdictional determinations promptly, accurately, and without constant consultation with the Research personnel.

As experience grew and the memoranda multiplied, the second major responsibility of the Research Directorate came increasingly to the fore, namely, the conduct of research pertaining to on-going, complex investigations. The discharge of this responsibility involved examination of relevant legislation, regulations and practice for complaints within the Ombudsman's jurisdiction. It was not only necessary to outline to the investigator the particular statutory and regulatory framework that applied to a given complaint, but it was also frequently necessary to determine whether the body complained of had acted properly and in accordance with the powers granted to it by the Legislature.

The Research Directorate received files primarily, although not exclusively, from the Special Assistant and Legal Officer's staff and from the General Investigations Directorate. In the former instance, such files usually involved a jurisdictional determination for governmental bodies not previously complained about. In the latter instance, investigators often had occasion to consult with Research staff on legal matters that had become germane during the course of an investigation. Finally, the Research Directorate itself occasionally conducted an investigation if the complaint involved particularly complex issues of a legal nature.

INSTITUTIONAL AND SPECIAL SERVICES

This Directorate, established in the latter part of 1975, had primary responsibility for complaints pertaining to the Workmen's Compensation Board and the Ministry of Correctional Services as well as complaints from persons confined to psychiatric institutions. One of the two original investigative Directorates, Institutional and Special Services received complaints from both residents and staff of over 100 provincial institutions including detention centres, correctional centres, adult training centres, community resource centres, juvenile training schools, jails and psychiatric hospitals. Because of the specialized expertise necessary to deal effectively and efficiently with files emanating from these areas, all such complaints were forwarded directly to the Directorate of Institutional and Special Services upon opening, rather than being directed to the Special Assistant and Legal Officer as were all other complaints.

Quite obviously, Institutional and Special Services had a highly specialized case load. From the opening of the office until the present day, more complaints understandably have been received from prisoners and persons involuntarily detained than from any other single source. At the outset, approximately one-third of all new files opened in the office of the Ombudsman fell within the jurisdiction of Institutional and Special Services. Many of these files were subsequently reopened one or more times for a variety of reasons.

Because of the elaborate and extensive appeal procedure of the Workmen's Compensation Board, many complaints regarding this Board were initially outside the office's jurisdiction when first received, since the Ombudsman is precluded from investigating such matters until all appeal procedures have either been exercised or the time for their exercise has expired. Thus, initial complaints against the Workmen's Compensation Board were not infrequently directed back into the W.C.B. appeal "stream". Those persons who eventually exhausted their appeal rights but who remained unhappy with the Board's decision often returned to the office and had their files reactivated. An even greater proportion of reopened files were in relation to inmates of jails and correctional facilities who, as they moved from institution to institution, complained about the same matter in different settings. This would be in addition to those inmates who complained about numerous different matters while confined to a single institution.

The expertise demanded of Institutional and Special Services investigators cannot be overstated. It is no exaggeration to say

that the problems encountered in fields such as Workmen's Compensation and corrections are, by and large, removed from the average Ontarian. And although one might have expected the initial flood of complaints from the Workmen's Compensation Board and correctional facilities to gradually abate, such was not the experience of the Ombudsman's office in Ontario. Because of this continuing extremely heavy case load, in the spring of 1977 the Directorate of Institutional and Special Services was abolished. The Directorate of Special Services and the Directorate of Correctional and Psychiatric Services were created. The Directorate of Special Services assumed responsibility for complaints against the Workmen's Compensation Board and complaints against agencies of the Ministry of Community Social Services while the Directorate of Correctional and Psychiatric Services continued responsibility for institutions falling under the aegis of the Ministry of Correctional Services as well as psychiatric institutions under the Ministry of Health.

A digression at this point is perhaps appropriate in relation to the philosophy adopted in the office of the Ombudsman towards complaints from prisoners. One might well query, having in mind the general enunciation of the Ombudsman function, does the Ombudsman in Ontario have a clear role to play in the present corrections system? Indeed, some persons have asked whether the Ombudsman's office should be involving itself in such an area of concern at all. A number of these persons have stated that the office is simply making work for itself. Others have concentrated on the general criticism that for the Ombudsman to involve himself in this area is simply another instance of the prisoner being molly-coddled,

that the accused and the convicted person in today's society is given far too many benefits before, during and after his trial, and that our criminal justice system is weak in this respect.

In determining the stance that was to be taken in relation to complaints from prisoners particular regard was had to Section 17 (2) of The Ombudsman Act which provides in part:

"(2) Notwithstanding any provision in any Act where any letter written by an inmate of any provincial correctional institution... is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman..."

Clearly, it was the intention of the drafters of The Ombudsman Act that the Ombudsman should be involved in receiving and investigating complaints from prisoners. Indeed, to facilitate this, the inmate was given the right to send his complaints to the Ombudsman in complete confidence. That this is the case was acknowledged by the Honourable Frank Drea, then Minister of Correctional Services, who stated in an appearance before a legislative committee on December 7, 1977, "The fact is, an inmate has an absolute right to a private dialogue with the Ombudsman". Mr. Drea on that occasion went on to state, in part, that "...as Minister [he] should not have the right to decide whether a complaint from an inmate is too trivial to warrant an investigation". At the same time, at the heart of the philosophy adhered to in the office of the Ombudsman in this regard is the notion that it is logically inconsistent that simply because a person is sentenced to prison because of a conviction in the criminal courts that person should, once incarcerated, be totally stripped of his rights as a citizen of the province. Simply stated, just because a person is sentenced to prison for a wrongdoing he is

still entitled to be treated fairly. This is a principle recognized by the Sub-Committee on the Penitentiary System in Canada which stated in its Report to Parliament:

"Justice for inmates is a personal right and also an essential condition of their socialization and personal reformation. It implies both respect for the person and property of others and fairness in treatment."

Before the appointment of the Ombudsman in Ontario there was a void within the prison system in the sense that once an inmate was sentenced, he was in many cases cut adrift, even from his own legal counsel. True, there were many lawyers who attempted to fill this void, but there was no person or functionary to whom an inmate had the right to turn to get legal assistance or simply to complain about matters which he felt adversely affected him. A decision was made that this should be one of the Ombudsman's most important and vital areas of concern, and since the creation of the office complaints from prisoners have always been accorded a special status.

There are more than 50 penal institutions in the Province of Ontario over which the Ombudsman has jurisdiction ranging from small jails to large maximum security correctional centres such as the Guelph Correctional Centre and Millbrook Correctional Centre, housing up to 500 inmates. There are, in addition, over 25 Community Resources Centres which are affiliated with many of the province's jails and prisons. These Centres although they are run by groups such as the Salvation Army, the Elizabeth Fry Society and the John Howard Society, are under the control of the jails and correctional centres with which they are affiliated as are the inmates who reside in these institutions and they are, therefore, also in the Ombudsman's jurisdiction. In the initial three years

of the operation of the Ombudsman's office in excess of 3,500 complaints were received from prisoners. During 1978 alone the office received close to 2,000 inmate complaints. In the aggregate, complaints from Ontario's prisons and related institutions now comprise something in the neighbourhood of 25% of all complaints received in the office of the Ombudsman. Insofar as the experience of the office is concerned, the conclusion is inescapable that the continuing heavy volume of such complaints is accounted for, at least in part, by need. This was emphasized by Mr. Glenn Thompson, Deputy Minister of Correctional Services for the Province of Ontario, in speaking to the National Conference of Canadian Ombudsmen in Toronto in 1977 when he said, in part:

"...it should be no surprise that our inmates are proportionately the Province's largest group of correspondents with the Ombudsman. The fact that the flow of their complaints has not declined rapidly after an initial burst of enthusiasm, reflects, I feel, a continuing need for an impartial investigative process for persons held in confinement."

The Ombudsman and his representatives act as independent, outside functionaries who can hear complaints or allegations from prisoners in complete confidence and who can investigate such matters in the same way. If nothing else, and it is admitted that an Ombudsman can be much more within the prison setting, an Ombudsman can at least act as a vent for the frustrations which will naturally arise in the close quarters of a prison, both on the part of the inmate and his custodian. In such settings, the Ombudsman can investigate and, when it is required, take action. This is a state of affairs acknowledged by officials in the Ministry of Correctional Services,

and again reference might be made to the statement of Mr. Glenn Thompson in a letter written to the Ombudsman in 1978 in which he stated, in part:

"...the creation of an Ombudsman's office in this Province has been, in my view, an extremely important milestone in correctional programme development. In a Ministry which has, as one of its main functions and burdens, the confinement of individuals, the need for an objective, external, and a non-political office to which individuals can take complaints is clearly an essential in the protection of human rights."

Importantly, this benefit can result in tangible, economic returns. Witness in this regard the statement made by the Honourable Frank Drea, at the time Minister of Correctional Services, in his testimony before the Administration of Justice Committee in June, 1978, in which he stated:

"...We believe the Ombudsman has helped us to avoid increased costs by, first, providing a safety valve for inmates and staff which helped the Ministry avoid confrontations. That is the ability of the inmate to write, without anybody looking at it; he can write to the Ombudsman in a envelope that will be sealed and delivered to the Ombudsman intact. The second point is that the Ombudsman is allowing institutional programmes to work more effectively, thus permitting greater use of our community programmes. I think that the third point is very significant. The amount of vandalism or deliberate damage inside institutions has dropped remarkably since the introduction of the Ombudsman."

The attitude of cooperation shown to the office of the Ombudsman by this particular Ministry from the very beginning made the role of the Ombudsman immeasurably less difficult.

Approximately 90% of the inmate complaints received are within the Ombudsman's jurisdiction and are therefore fully investigated. From the office's inception it has been a strict policy that, whenever possible, every inmate complaining to the

office should be interviewed, in person, and in private. Experience has indicated that one of the keys to an effective Ombudsman operation within the correctional system is the ability to respond to complaints immediately where the allegation is a serious one and to respond quickly in most other types of complaints. Virtually all inmate complaints are received in the Ombudsman's office through the mails. All incoming correspondence is viewed upon opening and any complaint adjudged to be of a serious nature is immediately assigned for investigation. There will inevitably be a number of complaints which, although of a serious nature, time is not of the essence in terms of complaint resolution. An example of this type of case would be a complaint of an inmate that his sentence has been incorrectly computed and thus his release date is 14 days later than the inmate feels it should be. Where the inmate has been sentenced to two years less a day and he has served but 30 days of that sentence the complaint is clearly one to be viewed seriously but certainly not one in which time is of the essence.

Mention was made earlier of the notification to the head of the appropriate governmental organization pursuant to Section 19 (1) of The Ombudsman Act advising of the Ombudsman's intention to investigate for those complaints determined to be within the Ombudsman's jurisdiction. The procedure adopted in collaboration with the Ministry of Correctional Services in respect of official notification of the head of the governmental organization affected in the case of a prisoner's complaint differs somewhat. Notwithstanding the mandatory wording of Section 19(1) an agreement was

reached between the Ombudsman's office and the Ministry of Correctional Services that formal notification, either written or oral, was unnecessary in every case. In accordance with this agreement written notification of intent to investigate would be sent in those cases where serious questions were raised, for instance, allegations of assault or complaints which raised questions about some general policy applied to the Ministry. On the other hand, the seriousness of a complaint often cannot be determined from the simple reading of the inmate's letter. It was therefore agreed that preliminary inquiries and investigations should be carried out before any investigation is formalized by means of a written Section 19(1) letter.

Investigators from the Ombudsman's office visit Ontario's penal institutions as complaints arise although there was an occasion when a decision was taken to attend at institutions and conduct an investigation on a broader scale than was indicated by a particular complaint. The investigation and subsequent Report on Adult Correctional Institutions in Ontario is a case in point. This investigation was commenced in the fall of 1975 in response to over 100 inmate complaints received by the Ombudsman prior to his being sworn in as Ombudsman on October 30, 1975. It was also in response to allegations made by the union representing correctional staff in the prisons that the system was at the bursting point, that it was overcrowded, that there was not enough discipline and that large-scale riots were imminent. The Report was a result of over two years study and investigation of the province's prison system.

Released in February, 1978 by the Ministry of Correctional Services, it was a voluminous report and contained more than 140 recommendations. The then Minister, the Honourable Frank Drea, termed the Report a "fair and accurate" document and stated further that it was the first time that a comprehensive report on the entire correctional system had been compiled.

Following a blitz involving more than 20 investigators of the Ombudsman's office during the late fall of 1975, the Ombudsman concluded that the system was not about to come apart at the seams as the union had alleged. At the same time the Ombudsman was concerned that some greater study and investigation be carried out over a longer period of time. This was done, and the final result was the Report on Adult Correctional Institutions.

The Corrections Report not only sought to single out areas of concern but also highlighted the fact that the system is basically a very good one, with an extremely large number of high calibre men and women working at all levels of that system. The people working in jails and prisons have some of the most difficult jobs in the civil service; too often, their dedication and service has gone unnoticed. The Report was unequivocal in this regard. That is not to say that the system is without its faults. The Report set forth in its conclusions that the principal malaise afflicting the correctional system in Ontario is overcrowding. Diversionary sentencing methods such as the Community Service Order were strongly applauded as a means of alleviating this situation. The Report also recommended the establishment of Advisory Committees at both the provincial and local levels comprising members of the criminal justice field from

each area. These bodies would be constituted of members of the Bar, both from the Crown and the defence side, and as well there would be representation from the judiciary and from correctional services' personnel. These Committees would have the responsibility of monitoring the status quo in institutions in their area with a view to hopefully avoiding problems of overcrowding and other problem situations which could eventually become dangerous.

The Report contained numerous other major recommendations; as an example, the Report recommended that court hours be extended and that mini-courts be established within the walls of a number of the larger jails and detention centres to ease the inconvenient and expensive problem of transporting remand prisoners to and from the jail and the court every eight days. Recommendation was made that female correctional officers be hired in greater numbers. The Report recommended that inmates in provincial institutions be granted the right to vote; in this regard, it was postulated that assuming incarceration is to be rehabilitative of the convicted person, granting prisoners the right to vote is not only a real but a symbolic step toward reintegrating them into the community that they have offended.

The foregoing discussion of complaints from prisoners and the Report on Adult Correctional Institutions is perhaps a somewhat lengthier digression than was initially intended. However, it serves to underline the decision regarding the importance which was to be accorded complaints of this nature in the Ontario Ombudsman's office. The Report itself is very comprehensive and is available for study by any interested party - enquiries in this regard may be made to the office of the Ombudsman.

GENERAL INVESTIGATIONS

This Directorate had responsibility for all investigations not falling within the jurisdiction of the Directorate of Institutional and Special Services. The range of General Investigations' responsibilities was very broad, covering all of the Ministries except for that of Correctional Services and all of the hundreds of boards, agencies and commissions. The staff of this Directorate, quite naturally, had the most diverse backgrounds of any group within the Ombudsman's office.

Originally, General Investigations received files shortly after opening and, following an examination of the contents and any necessary preliminary investigation, a decision was made, on the advice of the Directorate's staff, whether to proceed with a formal investigation, proceed informally, close the file for want of jurisdiction, or refer the matter for more extensive legal research. However, the attempt to parallel the operation of Institutional and Special Services proved untenable. General Investigations, with a staff approximately equal to that of Institutional and Special Services, but with a far more diverse scope of investigations and a far greater number of civil servants to deal with, could not hope to establish or maintain the intimate contact with Ministry officials which the Directorate of Institutional and Special Services enjoyed nor develop as thorough a familiarity with the many thousands of applicable statutes, regulations and practices. Thus, to ensure the expeditious investigation of complaints, a more formalized process was established. Files initially came through the Special Assistant and Legal Officer which group, as previously described, conducted a preliminary analysis and,

where an investigation was warranted, prepared a letter notifying the appropriate Ministry, agency, board or commission pursuant to Section 19(1) of The Ombudsman Act. After receipt of the governmental organizations' response, if any, and the preparation of suggested investigative guidelines by the Special Assistant and Legal Officer's staff the file was then forwarded to General Investigations.

Files were initially assigned to a particular staff member by the Director of General Investigations. The permanent investigators each had primary responsibility for one or more Ministries, and each generally dealt exclusively with all complaints against these assigned Ministries. Exceptions occurred when a particular aspect of a complaint necessitated special or expert attention, or when a complaint involved more than a single administrative unit of the government; in such cases, two or more investigators would co-ordinate their efforts under the supervision of the Director.

The staff of General Investigations participated extensively in the hearings programme; routinely, there were at least two investigators accompanying the hearing staff on the occasion of each hearing. Thus, citizens attending the hearings with severe or urgent problems could speak directly with someone who could investigate their complaint rather than simply listen and summarize; when investigators became aware of these problems they were often able to expedite the initial processing of the file upon their return to the Ombudsman's office. In addition, because of their experience with previous similar complaints these investigators were often able to obtain from the complainant aspects of the case which to that point had not

seemed important but which could save valuable hours later on. Moreover, all files under investigation in a particular locality were collected before each hearing and appointments made for the complainants to attend the hearing thus enabling face-to-face contact between investigative staff and the complainants with the minimal possible expenditure of travel, money and time.

Individual investigators, both in the Institutional and Special Services and General Investigations Directorates, were responsible for all action on a file from the time it was first assigned to them until the final disposition of the matter and the file was closed. Given the widely varying types of complaints and the particularities of each individual case it is impossible to recount exactly how investigations proceeded. In the most general terms, however, an investigator would receive a file with information provided initially by the complainant, by the research staff and by the governmental unit in responding to the Section 19(1) letter noted above. The "guidelines" provided by the Special Assistant and Legal Officer's staff were to be regarded as indicative rather than exhaustive. Initially the investigator would attempt to speak with both the complainant and the relevant civil servants either by telephone or in person. He or she would then speak to and solicit information and documents from as many other sources as appeared necessary. Discussion concerning respective investigations could and did take place on a regular basis with the Director.

One of two resolutions usually resulted from each investigation. Not infrequently, complaints were resolved before the

official investigation was complete. This could happen for many different reasons, for example, new information provided to either the complainant or the Ministry by the investigator might result in the withdrawal or compromise of a complaint, or the investigator himself or herself might act as a pseudo-arbitrator in bringing the complainant and the Ministry together and suggesting a possible agreement that each would find acceptable. This class of cases, when agreement was reached, constituted those files which were informally resolved.

Often, however, no such resolution was possible or acceptable to one or both parties. In these cases the investigator and the Director would decide when formal investigation of the matter was complete and would then put the file on the agenda for an upcoming Case Conference. The investigator would prepare a summary of relevant material for consideration by the Case Conference and would attempt to answer any questions arising out of this consideration and to offer his or her opinions on the matter. Regardless of whether the conclusion arrived at in the Case Conference was to close the file as unsupported or to make a formal recommendation to the Ministry, the investigator would remain primarily responsible for preparing, assembling, dispatching and monitoring further activities related to the file until it was finally closed.

RURAL, AGRICULTURAL AND MUNICIPAL SERVICES

This Directorate had primary responsibility for dealing with problems in four specialized areas; agriculture, municipalities, native peoples and francophone Ontarians. Each of these groups had

its own set of concerns and problems which set it apart from all other groups and citizens of the Province. It was in recognition of these unique characteristics that Rural, Agricultural and Municipal Services was originally established. Although any complaint which required a full-scale investigation would usually be transferred to General Investigations, the file would be assigned to Rural, Agricultural and Municipal Services by the Special Assistant and Legal Officer's staff so that the former might serve as the initial liaison and information-gathering facility for complaints issuing from any of the above four groups. Even after a file had been transferred to General Investigations, Rural, Agricultural and Municipal Services personnel continued to assist other staff members responsible for the file, offering advice, suggestions and interpretation whenever warranted as the complaint investigation process proceeded.

There are approximately 90 Ontario statutes that bear directly or indirectly upon agricultural concerns; a veritable multitude of boards, agencies and commissions exists to administer these various acts. One of the initial tasks undertaken by the Rural, Agricultural and Municipal Services Directorate was to compile an index of Ontario statutory appeal procedures, thus enabling both agriculturists and staff members to determine rapidly and efficiently just what rights of appeal or objection lay open in each particular case. Rural, Agricultural and Municipal Services also acted as a referral and liaison service for those agricultural complaints which were directed against federally-administered programmes and, as such,

were beyond the Ontario Ombudsman's formal competence to consider.

While complaints related to the administration of municipalities are excluded from the Ombudsman's jurisdiction in Ontario, the Ombudsman does have the power to investigate complaints by municipalities against the provincial governmental administration. Ontario municipalities come under the very real and direct control of the provincial government. With 832 separate municipalities it is to be expected that problems are experienced with the amount of regulation and degree of complexity of that administration steadily increasing at all levels of government. Working through Rural, Agricultural and Municipal Services, the Ombudsman proved of particular value to the small, remote municipalities who did not themselves enjoy the resources, expertise or proximity to Queen's Park which allowed large, urban centres to lobby effectively on particular issues of municipal importance. At the same time, this Directorate served as the resource centre for referring complaints against municipalities to the appropriate officials.

Virtually all reserves for native peoples in Canada are established by, and thereafter remain the responsibility of, the federal government. Furthermore, the Indian Act, by far the most significant and pervasive piece of legislation in the lives of native persons, is a federal enactment. This means that any provincial Ombudsman is necessarily restricted in dealing with complaints from native peoples, the great majority of which will be lodged against federal governmental organizations. This is not to say that there are not a number of complaints within the provincial Ombudsman's

jurisdiction coming from native peoples and it was with a view to establishing and maintaining a close communication with this segment of Ontario's population that the Rural, Agricultural and Municipal Services Directorate was assigned this area of responsibility.

Finally, the main concern of the Rural, Agricultural and Municipal Services Directorate with respect to the francophone community was to ensure that all functions and services of the Ombudsman's office were as available to francophone, as to anglophone, Ontarians. In addition to serving as a liaison between francophone complainants and the rest of the office's staff this Directorate also was responsible for French media contact and for all translation services associated with the office's official publications.

COMMUNICATIONS

The major responsibility of this Directorate was the communication of information concerning the office of the Ombudsman to all members of the public. Although not directly involved in complaint investigation and resolution, the importance of this Directorate to the newly-created Ombudsman institution should not be underestimated.

In 1975, few Ontarians had ever heard the word ombudsman and fewer still knew what such a functionary did. Before citizens could be educated in the nuances of what constituted a "governmental organization", they first had to know that an Ombudsman existed. The Directorate of Communications played a crucial role in establishing the office's presence and mandate from the earliest days of the new institution.

All publicly-oriented programmes were subsumed under the Communications' umbrella. Communications did all "advance" work in connection with the private hearings that took place around the province which entailed not only ensuring that the various media gave the event as broad coverage as possible but also notifying the appropriate members of the Legislative Assembly and local officials. All arrangements for the scheduling of speaking engagements by the Ombudsman and his staff were coordinated through this Directorate. It might just be mentioned at this point that by means of speaking engagements alone, more than 50,000 citizens of the Province were addressed directly by Ombudsman personnel within the first three months of the office's creation, over 37,000 by the Ombudsman himself.

This Directorate was also responsible for arranging and coordinating all radio and television appearances by the Ombudsman and his staff on both English and French networks throughout Ontario. The "hotline" and "openline" programmes often proved useful formats for demonstrating, on a complaint-by-complaint basis, just how the Ombudsman's office could assist individual complainants.

Communications not only prepared and distributed timely press releases in fact sheets but kept archival records of the office's development as reported in all media. In keeping with its public relations' function, the Directorate ensured the orderly observance of protocol during the many visits of Canadian and international officials and held primary responsibility for the planning and execution of the conference of Canadian Legislative Ombudsmen in 1977.

ADMINISTRATION

This Directorate served a support function for all other Directorates in the office. Accounting services included preparation of annual budget estimates, management of cash expenditures and payment of salaries and travel expenses for employees. The purchasing section arranged for the acquisition and repair of office furniture, equipment and supplies, as well as maintaining stores of frequently used supplies and controlling the petty cash flow for incidental purposes. The personnel section was responsible for the documentation of new employees and preparation of their contracts and for the maintenance of confidential personnel files.

The system and records group was also subsumed under this Directorate. This group opened new files, monitored file movement through the office and summarized relevant data upon file closing. Many of these statistics were utilized to form sections of the Ombudsman's Reports to the Legislature. Within this sub-group, the library services section provided for the acquisition and maintenance of the office library which obviously is an important tool for any staff member engaged in research.

OMBUDSMAN GROUP

Each of the preceding Directorates was answerable directly to the Ombudsman. In terms of the office's organization, the Ombudsman had ultimate authority in all matters, such authority being vested in him, and required of him, by The Ombudsman Act. The Ombudsman Group was comprised of the Ombudsman, his executive, legislative, administrative and reporting assistants as well as his secretarial

staff. The responsibilities of this group were, as to be expected, the most diverse in the office.

The executive assistant worked most directly and immediately with the Ombudsman, and was invariably responsible for ensuring that the Ombudsman's wishes were not only communicated to but properly effected by the entire staff. The legislative assistant was the Ombudsman's personal representative at Queen's Park, attending all sittings of the legislature, serving as liaison between the members of the Legislative Assembly and the Ombudsman, offering the office's assistance at the members' requests, and serving as a complaint receptionist and interviewer for those citizens who found it most convenient to attend at Queen's Park or who were referred directly by a member that they were visiting. Moreover, since the Ombudsman is both a creature and an officer of the legislature, it is appropriate that he maintains an office within the legislative buildings themselves thereby remaining both visible and accessible. The administrative assistant was the Ombudsman's personal assistant for ensuring that arrangements for all public functions of the Ombudsman were so organized that events proceeded in a timely and orderly manner; additionally, this individual would assist the Special Assistant and Legal Officer's staff in the handling of their files whenever time permitted. The reporting assistant was responsible for the coordination of legislative and special reports of the office, assisted in the preparation of public speeches by the Ombudsman and other staff and worked closely with the Directorate of Communications on specific public relations matters.

The Ombudsman's many public functions were organized by this Group and usually coordinated with Communications. Matters of general policy concerning all phases of complaint disposition and organizational procedure were ultimately the responsibility of the Ombudsman Group.

From the outset, the Ombudsman was of the view that incoming mail should be constantly reviewed and monitored by senior staff members. Accordingly, all mail was opened by the Ombudsman's personal secretarial staff so that the Ombudsman could be immediately informed of unique or special problems with new or existing files, be kept abreast of new complaints from the general tenor of complaints received, and be kept advised of both critical and favourable comments on the office generally and in its specific aspects. At the other end of the investigative spectrum, the Ombudsman was the chief presiding officer at Case Conferences which decided the final resolution of complaints. In effect, this arrangement allowed for the Ombudsman to fill the requisite roles of chief executive officer within the office as well as the office's principal public spokesman.

CASE CONFERENCE

Apart from the outline of organizational units described above, a description of the office would remain incomplete without mention of the Case Conference. This procedure was devised to allow the office to discharge its principal mandate, namely, the resolution of citizen complaints.

Once the investigator and the respective Director agreed that no further investigation was necessary, a file would be placed on the agenda for a Case Conference. The investigator would prepare a thorough synopsis of the complaint, outline the history, facts, investigation and possible conclusions in the matter. This Case Conference Summary would be distributed to all legal staff one week prior to the relevant Case Conference.

The Case Conference itself was presided over by the Ombudsman. Others in attendance were the legal staff, the investigator and the aforementioned Director. Consideration would be given to one file at a time; any questions or problems arising from the Summary would be clarified by the investigator; individual and legal repercussions were examined and the Ombudsman would then solicit the opinion of each participant before ultimately arriving at a decision on the matter.

One of three decision possibilities generally ensued. The complaint could be found to be unsupported; in that case, the complainant and the relevant governmental organization would be so notified and the file closed. Infrequently, but on occasion, it could be decided that the matter required further investigation; in that instance, the investigator would retain the file and, upon completion of this further investigation, would report again at a subsequent Case Conference. Finally, the complaint could be adjudged to be supported; in this eventuality the complainant would be informed that the matter had been discussed and that the office was contacting the governmental organization to attempt a resolution.

The governmental organization would be notified by letter that, pursuant to Section 19(3) of The Ombudsman Act, the Ombudsman was considering making a formal recommendation to the governmental organization and would entertain any comments that the organization might offer on that tentative recommendation. In the latter case the investigator would retain the file and, working with a member of the legal staff, would see the complaint through to its final resolution.

The foregoing discussion has summarized, in substantial but not exhaustive detail, the establishment and development of the organizational structure of the Ombudsman's office in Ontario. The responsibilities and interrelationships of the various directorates have been described. As well, the handling of complaints has been indicated from their first reception in the office, to investigation and Case Conference, and on to final resolution and closing. Because each complaint is unique, obviously only the most general statements about their individual progress are possible. As intimated earlier, a fully routinized organization, one that could be more easily reduced to boxes and one-way arrows, would simply be inadequate to the job that needs doing.

While laying claim to neither optimum efficiency nor unerring foresight, the organizational development of the office was an attempt to seek a mean - to strike a balance between red tape and the ad hoc. Whenever avenues of improved efficiency were discovered, every effort was made to pursue them to their ends and integrate them into the office's procedure. The office of the Ombudsman was created to serve

the citizens of the Province of Ontario. This goal can be achieved in many ways, but the principle that was adopted was that it was not to be achieved by any design, no matter how organizationally desirable, fiscally sound or managerially sophisticated, that judged people and their problems to be any but the most important concern.

Consequently, the office was, during the initial three years of its operation, in a virtually continuing state of development and evolution. As perhaps might be expected, the harshest, and most valuable, critics were always those from within the office itself. They knew what was being done and what was not and were encouraged to make their views known in this regard. Aside from the suggestions for improvement that came from the staff, the office also turned to outside experts for objective assessments of its strengths and weaknesses. The management consulting firm of Hickling - Johnston Ltd., which had earlier conducted a salary administration study for the office, was commissioned in early 1978 to undertake a comprehensive management review of all phases of the Ombudsman's operation.

Interestingly, perhaps the most striking conclusion reached by the Hickling - Johnston study was the minor nature of the realignment required in the office's organizational structure. In accordance with the study's recommendation, the number of Directors has been reduced to six: General Investigations, Regional Services, Special Services, Correctional and Psychiatric Services, Legal Services and Complaint Policy and Controller. The Directors of each unit sit on the seven-person Executive Committee, which is chaired by the Executive Director of the office, a newly-created position. Many of the day-to-day details of running the office are now dealt with

by this Committee, thus freeing the Ombudsman from much administrative work and giving him more time for consideration of complaints and matters of general policy.

Four of the original Directorates remained intact. The three investigative units already had specialized functions whose efficiency would not have been enhanced by any amalgamation; there were, on the other hand, certain internal modifications within each of these Directorates as noted below. Administration, of course, with its support function for the entire office, could not reasonably be subsumed under any other Directorate.

The former Directorates of Interview Services and Rural, Agricultural and Municipal Services have now been integrated into the Directorate of Regional Services. As described earlier, the roles of the two original Directorates were largely orientational and referential in nature; they served as liaisons between citizens first approaching the office and the formal investigative arms of the office as well as ensuring that every effort was made to assist those complainants whose problems did not fall within the Ombudsman's jurisdiction. The management study concluded that their distinct but complementary functions could be more efficiently coordinated and exercised within a single organizational unit.

The Research Directorate, which had originally devoted itself almost exclusively to questions of jurisdictional determination within the meaning of the Ombudsman Act had compiled a most extensive list of memoranda of law after three years. Only infrequently does the office now encounter organizations whose jurisdictional status

remains uncertain. Accordingly, there had been an increasing trend for Research's actual functions to become similar to those performed by the Special Assistant and Legal Officer's staff. Moreover, of course, the original roles of Research and the Special Assistant and Legal Officer were highly complementary from the outset. Consequently, the Hickling - Johnson study recommended that these two Directorates be formally reconstituted as the Directorate of Legal Services and Complaint Policy and this reorganization has now been effected.

Finally, the present high public visibility of the office throughout the province bears witness to the successful manner in which the Communications Directorate executed its original mandate. Today, with citizens well aware of their Ombudsman's office, the need for such extensive and concentrated efforts to communicate information to the public is much lessened. Accordingly, the Communications' staff has been reduced and the head of Communications now reports directly to the Ombudsman as a Special Assistant within the Ombudsman Group. This title of Special Asssistant is also given to the legislative liaison officer who remains at Queen's Park and continues as a member of the Ombudsman Group.

Hickling - Johnston also made certain recommendations regarding changes in the procedure for handling complaints which have been implemented. Their report suggested that the screening of incoming complaints be fully centralized and to accommodate this recommendation, keeping in mind the Ombudsman's concern that senior personnel should always review incoming mail, the mail opening and monitoring function has now been transferred to the Directorate of

Regional Services. There the Director has a special responsibility to stay attuned, on a daily basis, to letters received from citizens. Since this Directorate is also the primary reception facility for complaints received at hearings, by telephone and from those who visit the office in person, full compliance with the management study recommendation has been achieved. The mail is subsequently forwarded to the appropriate staff member if a file already exists; failing this, Records opens a new file and directs the contents to one of the Legal, Special Services or Correctional and Psychiatric Services Directorates as appropriate.

Telephone complaints are handled by complaint officers on the Regional Services staff who, after determining the general nature of the problem, immediately transfer the call to the relevant Directorate. Each of the three investigative Directorates now assigns its investigators, on a rotational basis, to man the Directorate's interview desk and answer these transferred calls, as well as receiving citizens who bring their complaints to the office in person. Whenever feasible the investigator who initially discusses the problem in depth with the complainant subsequently attempts to pursue the complaint through all phases until the file is closed.

Finally, the legal staff has been decentralized with legal advisers now assigned on a full-time basis to each of the investigative Directorates. An Organizational Chart is attached as Figure 2 which indicates, substantially, the present organization of the office and for those interested in the details of the study, the Report itself has been included as Appendix C. Hopefully, all of these changes will result in not merely a more efficient organization but in an Ombudsman's office that can better serve the citizens of the Province of

FIGURE 1. ORGANIZATIONAL STRUCTURE - OFFICE OF
THE OMBUDSMAN - ONTARIO (1975)

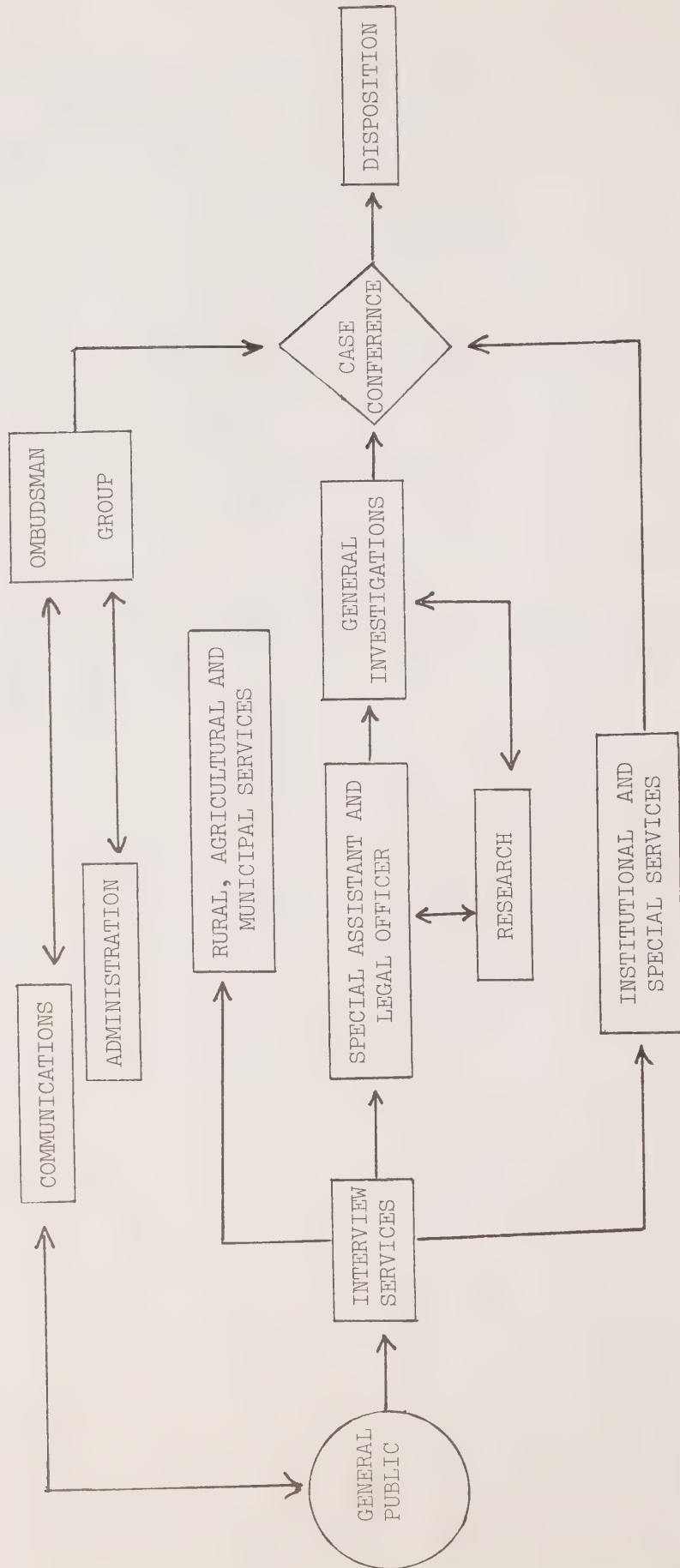
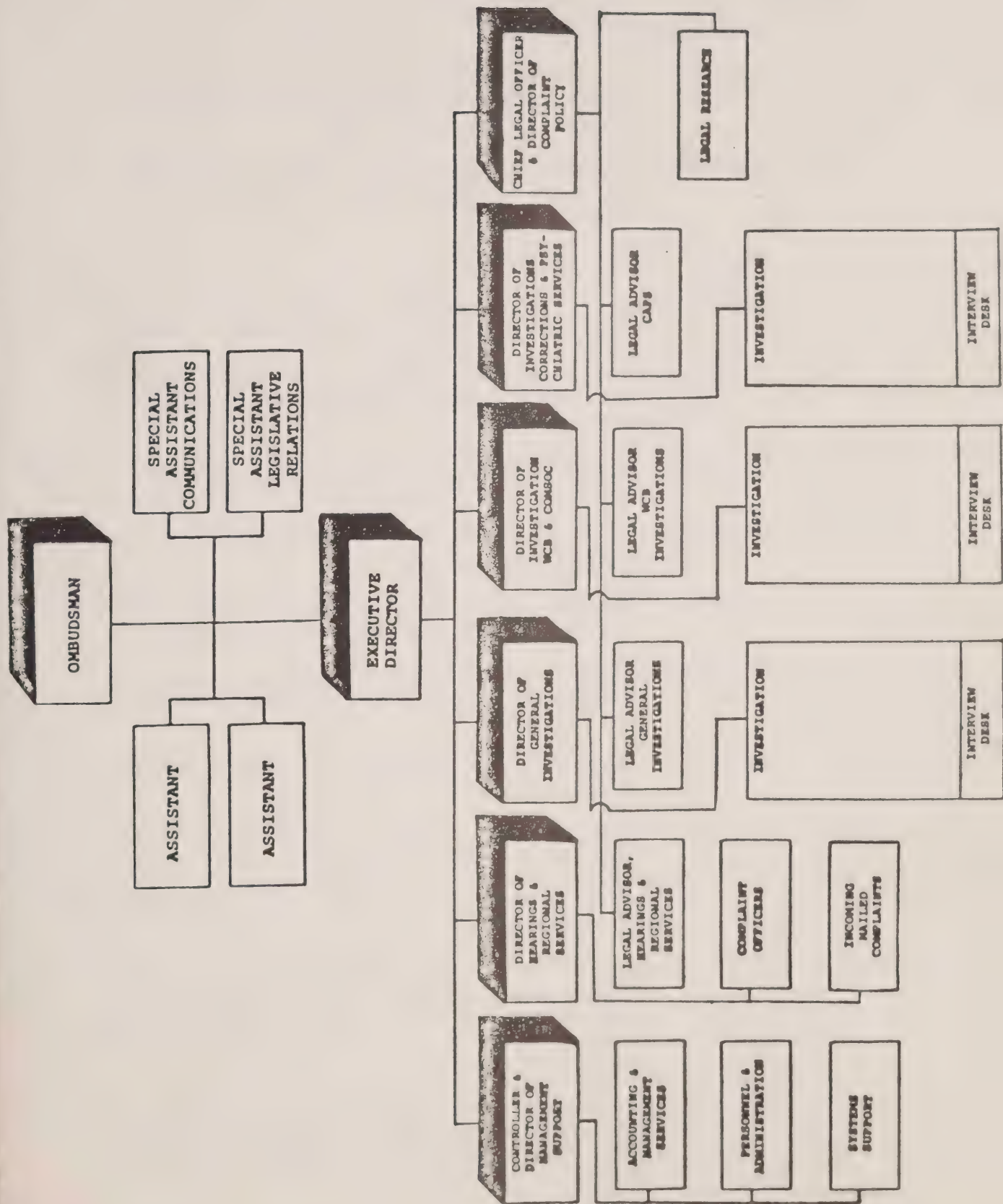


FIGURE 2. ORGANIZATIONAL STRUCTURE - OFFICE OF THE OMBUDSMAN - ONTARIO (1978)



PRECEDENT LETTERS AND DOCUMENTS

I N D E X

1. Section 19(1) letter
2. Reporting letter to governmental organization where complaint is resolved as a result of the 19(1) being sent
3. Reporting letter to complainant where complaint is resolved as a result of the 19(1) being sent
4. Section 19(3) letter
5. Covering letter to complainant where complaint is unsupported, enclosing a copy of report
6. Covering letter to governmental organization enclosing report where complaint is not supported
7. Report of the Ombudsman to complainant and governmental organization where complaint is unsupported
8. Covering letter to governmental organization where complaint is supported
9. Report of the Ombudsman to the governmental organization where complaint is supported
10. Covering letter to complainant where complaint is supported and recommendation has been implemented
11. Letter to governmental organization where it has implemented our recommendation
12. Letter to complainant where recommendation made to a governmental organization has not been implemented and the Ombudsman is not going to send a copy of report and recommendation to the Premier
13. Letter to complainant where recommendation made to a governmental organization has not been implemented and the Ombudsman is going to send a copy of report and recommendation to the Premier
14. Letter to governmental organization where Ombudsman has made a recommendation, it has not been implemented and Ombudsman is not going to the Premier

15. Letter to governmental organization where Ombudsman has made a recommendation, it has not been implemented and Ombudsman is going to the Premier
16. Letter to the Premier



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ON
M5H 2M5
TELEPHONE (416) 869- 4130

May 31, 1978

Mr. R.J. Butler,
Deputy Minister,
Ministry of Consumer and
Commercial Relations,
555 Yonge Street,
Toronto, Ontario.

Dear Mr. Butler:

Re: Our File No. 0000
SMITH, Mr. John,
43 Anyplace Street,
Nowhere, Ontario.

[Mr. John Smith] has contacted this Office with
a complaint that appears to fall within the jurisdiction
of the [governmental organization].

Briefly, [Mr. Smith's] contentions are as follows:

_____.

The purpose of this letter is to inform you,
pursuant to section 19(1) of The Ombudsman Act, 1975, of
the Ombudsman's intention to investigate this complaint.
It is quite possible that it would expedite the resolution
of this matter if your [governmental organization] were
prepared at this time to indicate its view of this complaint.
Nat. Res. **Accordingly, to enable you to do so, we shall delay our
See below investigation for a period of three weeks from the date
of your receipt of this letter.

We know that it is not necessary to give either
you or the officials of your [governmental organization]
our assurance that no opinion has been formed by the
Ombudsman or by any member of his staff with respect to
the merits of [Mr. Smith's] contentions.

Page 2

Mr. R.J. Butler - SMITH

May 31, 1978

We are confident that this matter will be resolved and we ask you to accept our thanks for your anticipated co-operation.

Please find enclosed for your convenience, a copy of this letter to be directed to the attention of the appropriate official or officials.

Yours very truly,

Arthur Maloney, Q.C.

per: T.P. O'Connor, Q.C.,
Deputy Legal Officer.

Enclosure

** Natural Resources: "If you could let us have a statement of your Ministry's position within a reasonable period of time, we will withhold any action by way of further investigation until we have heard from you."

REPORTING LETTER TO GOVERNMENTAL ORGANIZATION WHERE COMPLAINT
IS RESOLVED AS A RESULT OF THE 19(1) BEING SENT

ARTHUR MALONEY, Q.C.

- 72 -



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. J. C. Thatcher,
Deputy Minister,
Ministry of Government Services,
12th Floor,
Ferguson Block,
Queen's Park,
Toronto, Ontario.

Dear Mr. Thatcher:

Re: Our File #8951/77
DOE, Mr. John
35 Law Street
Toronto, Ontario

Further to your letter of November 21st, 1977,
I am writing to advise that our investigation of the complaint
registered with this Office by [Mr. John Doe] has been terminated.

[Mr. Doe] first wrote my Office on September 23rd,
1977, complaining of the long delay on the part of your
[governmental organization] in depositing certain monies into
his Registered Retirement Savings Plan with the Canada Trust
Company. He felt that he should in some way be recompensed
for the loss of interest for the thirty-one (31) day period
of the delay inasmuch as the loss was due to an error on the
[governmental organization] part.

On October 17th, 1977, I wrote to you to advise
you of my intention to investigate [Mr. Doe's] complaint. In my
letter I summarized the complaint as cited above.

I also asked if you were prepared to give a state-
ment of your [governmental organization] position on the
complaint.

In response to my request for your position, it
would appear that you conducted your own investigation. As a
result of that investigation, your [governmental organization]
issued a cheque to [Mr. Doe] in the amount of \$90.83 in settlement
of his claim.

- 73 -

Mr. J. C. Thatcher
Re: Our File #8951/77 - DOE
May 31, 1978

I understand that [Mr. Doe] is satisfied with the resolution of his complaint against the [governmental organization]. He has been paid the money owing to him and has signed a release to that effect.

Accordingly, I have terminated my investigation of this complaint and this file has been closed.

I wish to thank you and the officials of the [governmental organization] for the cooperation extended to this Office during our investigation of this complaint.

Yours faithfully,

Arthur Maloney

[Author's & typist's
initials on copy only]

REPORTING LETTER TO COMPLAINANT WHERE COMPLAINT IS
RESOLVED AS A RESULT OF THE 19(1) BEING SENT.

ARTHUR MALONEY, Q.C.

- 74 -



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. John Doe
35 Law Street
Toronto, Ontario

Dear Mr. Doe:

Re: Our File #8951/77

This will confirm your telephone conversation with Miss Linda Leikin of our Legal Services Directorate on December 21st, 1977.

I understand that you first wrote my Office on September 23rd, 1977, complaining of the long delay on the part of the [governmental organization] in depositing certain monies into your Registered Retirement Savings Plan with the Canada Trust Company. You felt that you should in some way be recompensed for the loss of interest for the thirty-one (31) day delay inasmuch as the loss was due to an error on the part of the [governmental organization].

On October 17th, 1977, I wrote to Mr. J. C. Thatcher, Deputy Minister of [governmental organization] and advised him of my intention to investigate your complaint. In my letter, I capsulated your complaint as cited above.

I also asked Mr. Thatcher if he was prepared to give a statement of his [governmental organization] position on your complaint.

In response to my request for a statement of position, it would appear that the [governmental organization] conducted its own investigation into this matter. As a result of that investigation, the [governmental organization] issued a cheque to you in the amount of \$90.83 in settlement of your claim.

/...2

Mr. John Doe
Re: Our File #8951/77
May 31, 1978

I have recently been advised by Miss Leikin that you are satisfied with the resolution of your complaint against the [governmental organization]. It appears that you have been paid the money owing to you and you have signed a release to that effect.

Accordingly, I have terminated my investigation of your complaint and your file has been closed.

I would like to point out, however, that if at some future date you require the assistance of the Ombudsman, please do not hesitate to contact this Office and we shall conduct a review of your complaint.

Yours faithfully,

Arthur Maloney

[Author's & typist's
initials on copy only]



The Ombudsman | Ontario

- 76 -

ARTHUR MALONEY, Q.C.

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. Gordon Batchelor
Chairman
Residential Premises Rent
Review Board
7th Floor, 60 Bloor St.W.
Toronto, Ontario M4W 1E9

Dear Mr. Batchelor:

Re: Our File #000

As you know, Mr. John Doe of Anyplace, Ontario, has submitted a complaint to my Office relating to an order of the Residential Premises Rent Review Board. Our investigation of this complaint is close to completion.

This letter is being written to you pursuant to the provisions of section 19(3) of The Ombudsman Act, 1975, which for your convenience, I now set forth in its entirety:

"The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but, if any any time during the course of an investigation, it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any governmental organization or person, he shall give to that organization or person the opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel." (Emphasis added.)

During the course of this investigation, two specific aspects of Mr. Doe's complaint are being considered:

(Detail the specific areas of concern.)

Mr. Gordon Batchelor
File #0000--DOE

May 31, 1978

In my opinion, on the basis of the investigation thus far conducted, it may be open to me to make a report that would justify the possible conclusions and recommendations referred to in the next paragraph. Nevertheless, my views remain open as the investigation is still ongoing, and I await any representations to be made by you or on your behalf.

The possible conclusions and recommendations are as follows:

Possible Conclusions

It would appear that it might be open to me to conclude ...

(Should be in declarative form listing facts which lead to possible conclusions. Should also include a reference to the appropriate paragraph of section 22(1) or (2).)

Possible Recommendations

It would appear that it might be open to me to recommend ...

(A reference to the appropriate paragraph of 22(3) should be included.)

I am of the view that you (and the other parties to whom I will address a similar letter) should be given an opportunity to address yourself(ves) to these possible conclusions and recommendations before I come to a final conclusion and make any final recommendation in relation to this complaint. If you wish to make such representations in writing, I would be grateful if you would forward them to me within three weeks of your receipt of this letter. If you prefer to appear in person or by counsel, please let me know so that a meeting for the purpose can be convened.

[I am enclosing a copy of The Ombudsman Act, 1975 for your convenience.]

Yours faithfully,

Arthur Maloney

Enclosure

[Author's & Typist's

Precedent #5

ARTHUR MALONEY, Q.C.

- 78 -



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONT M1C 1C1
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. John Doe,
R.R. #2,
Proton Station,
Ontario. N0C 1L0

Dear Mr. Doe:

Re: Our File No. 8951

My Office's investigation into your complaint against the Residential Premises Rent Review Board is now complete. Enclosed herewith please find my report containing the results of the investigation conducted.

As you will read, I have been compelled by the facts as I have found them, to find your complaint unsupported. I regret that it was not possible under The Ombudsman Act for me to be of assistance to you.

I shall now report the results of my investigation into your complaint to the Residential Premises Rent Review Board, and then proceed to close our file.

Yours faithfully,

Arthur Maloney.

Enclosure

[Author's & typist's
initials on copy only]

COVERING LETTER TO THE GOVERNMENTAL
ORGANIZATION ENCLOSING REPORT WHERE
COMPLAINT IS NOT SUPPORTED

Precedent #6

ARTHUR MALONEY, Q.C.

- 79 -

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

 The Ombudsman | Ontario

May 31, 1978

Mr. Gordon T. Batchelor,
Chairman,
Residential Premises Rent
Review Board,
7th Floor,
60 Bloor Street, West,
Toronto, Ontario.

Dear Mr. Batchelor:

Re: Our File No. 8951
ROTHER, Mr. George,
35 Laws Street,
Toronto, Ontario.

My Office's investigation into [Mr. Rother's] complaint respecting a decision of the [Residential Premises Rent Review Board] is now complete, and I am enclosing herewith a report containing the results of the investigation conducted.

As you will see, I have found [Mr. Rother's] complaint to be unsupported. I have also sent a report to [Mr. Rother].

I would like to thank you and the officials of the [Board] for the co-operation extended to the members of my staff throughout this investigation.

Yours faithfully,

Arthur Maloney.

Enclosure

[Author's & typist's
initials on copy only]

- 80 -

REPORT OF THE OMBUDSMAN
CONTAINING THE RESULTS OF HIS INVESTIGATION
INTO THE COMPLAINT OF
MR. JOHN DOE

1. When and in what manner complaint was received.

Mr. John Doe first wrote my Office on September 8, 1977, complaining of a decision rendered by the Residential Premises Rent Review Board and dated June 1st, as that decision affected him.
2. When 19(1) letter sent, and substance of complaint.

On September 15, 1977, I wrote to Mr. Gordon T. Batchelor, Chairman of the Residential Premises Rent Review Board, in accordance with the requirements of The Ombudsman Act, and advised him of my intention to investigate Mr. Doe's complaint as follows:

"Mr. Doe's contention to my Office was that a decision made by the Residential Premises Rent Review Board on June 1, 1977, which did not grant him an increase in his rent, was unreasonable and one-sided, as the Board members did not consider all the relevant information."
3. Was governmental organization's position received and if so, when?

I also asked Mr. Batchelor whether he was prepared to give a statement of his Board's position on Mr. Doe's complaint. Having received this statement on September 29th, our file on the complaint was then assigned to Mrs. Susan Matthews, a member of my investigative staff, for investigation.
4. To whom was file assigned for investigation and what did investigation consists of?

After contacting Mr. Doe and receiving further information relevant to his complaint, Mrs. Matthews reviewed the contents of the Board's file with Mrs. Armitage, Registrar of the Board, making photocopies of documents where necessary.

5. What were results of our Office's investigation bearing in mind duty of confidentiality?

It is my understanding that when a person applies for a hearing before the Residential Premises Rent Review Board, he is sent a notice indicating that, if the landlord does not provide sufficient documentation of his projected increases, he may not be awarded any increase by the Board. This makes it clear that the onus is upon the landlord to prove the projected costs, which he feels warrant an increase in rent.

6. Reasons why complaint has been found to be unsupported.

In a case such as Mr. Doe's, The Ombudsman Act only permits me to find a complaint to be supported and make an appropriate recommendation where I am of the view that the decision complained of was "unreasonable, unjust, oppressive, or improperly discriminatory". Having considered the results of the investigation conducted by my Office, I am unable to so describe the decision of the Residential Premises Rent Review Board in Mr. Doe's case.

Arthur Maloney, Q.C.

Date

COVERING LETTER TO GOVERNMENTAL ORGANIZATION
WHERE COMPLAINT IS SUPPORTED

Precedent #8



The Ombudsman | Ontario

- 82 -

ARTHUR MALONEY, Q.C.

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. Gordon T. Batchelor,
Chairman,
Residential Premises Rent
Review Board,
7th Floor,
60 Bloor Street, West,
Toronto, Ontario.

Dear Mr. Batchelor:

Re: Our File No. 8951
DOE, Mr. John,
35 Laws Street,
Toronto, Ontario.

My Office's investigation into [Mr. John Doe's] complaint respecting a decision of the [Residential Premises Rent Review Board] is now complete, and I am enclosing herewith a report containing the results of the investigation conducted.

As you will see, I have found [Mr. Doe's] complaint to be supported, and made a recommendation, pursuant to section 22 of The Ombudsman Act, which I determined was appropriate under the circumstances.

Subsection (3) of section 22 of the Act permits me to "request the governmental organization to notify [me] within a specified time, of the steps, if any, that it proposes to take to give effect to [my] recommendation".

Unless you feel a longer time is required, in which case I would appreciate hearing from you, I am suggesting a period of ten days from the receipt of this letter. I will hold off reporting the results of my investigation to [Mr. Doe] until I have received your letter.

I would like to thank you and the officials of the [Board] for the co-operation extended to the members of my staff throughout this investigation.

Yours faithfully,

Enclosure

[Author's & typist's
initials on copy only]

Arthur Maloney.

- 83 -

REPORT OF THE OMBUDSMAN'S OPINION, REASONS
THEREFOR AND RECOMMENDATIONS FOLLOWING HIS INVESTIGATION
IN THE COMPLAINT OF MR. JOHN DOE

When and in what
manner complaint
was received

Mr. John Doe first wrote my office on June 1st, 1977, complaining of a decision rendered by the Residential Premises Rent Review Board and dated August 23, 1976, as that decision affected him.

When 19(1) letter
sent, and substance
of complaint

On June 15, 1977, I wrote to Mr. Gordon Batchelor, Chairman of the Residential Premises Rent Review Board, in accordance with the requirements of The Ombudsman Act, and advised him of my intention to investigate his complaint. In my letter, I capsulated Mr. Doe's complaint as follows:

"Mr. Doe's contention to my office was that a decision made by the Residential Premises Rent Review Board on August 23, 1976 was unreasonable and unjust, since the Board had failed to consider the agreement reached by the landlord and tenant with respect to Apartment B."

Was governmental
organization's position
received and if so, when

I also asked Mr. Batchelor whether he was prepared to give a statement of his Board's position on Mr. Doe's complaint. Having received this statement on June 30, our file on the complaint was then assigned to Miss Susan Osler, a member of my investigative staff, for investigation.

To whom was file assigned
for investigation and
what did investigation
consist of

After contacting Mr. Doe and receiving further information relative to his complaint, Miss Osler reviewed the contents of the Board's file with Mrs. Armitage, Registrar of the Board, making photocopies of documents where necessary.

What were results of our
office's investigation

During the course of the investigation, I came to the possible conclusion that the Board exercised its discretion improperly in not permitting the increase applied for by the landlord which the tenant had agreed to, as provided for in Section 4(5) of The Residential Premises Rent Review Act. Accordingly, I reported my possible conclusion to Mr. Batchelor together with my possible recommendation by letter dated July 22, 1977.

Because in my view, the Board might be "adversely affected" by my possible conclusion and recommendation, I accorded to the Board the opportunity to make representations respecting the possible adverse report pursuant to Section 19(3) of The Ombudsman Act. Representations were received on behalf of the Board by letter dated July 27, 1977. In short, the Board could not agree that its discretion in the matter had been improperly exercised.

I have carefully considered the representations of the Board in the light of the investigation conducted.

Section 4(5) of The Residential Premises Rent Review Act gives express recognition to agreements entered into between landlords and tenants which stipulate for a rent in excess of the limits otherwise provided by Sections 4 and 5.

Our investigation has revealed that such a tenancy agreement was in fact entered into between Mr. Doe and Mr. and Mrs. Deer on January 13, 1976, and was filed with the Rent Review Officer prior to the hearing held on August 17. On Mr. Doe's Form 12 application for a hearing, he stated the reasons for his requesting an appeal as follows:

"Recognition of the agreement reached by the landlord and tenant, signed January 13, 1976, for the period September 1, 1975, to December 31, 1975, which was submitted in consideration of the Rent Review Officer's Order."

A review of the Board file by Miss Osler failed to turn up a copy of this agreement. In my view the Board members should have directed themselves to the issue of the tenancy agreement in view of the reasons specified on the Form 12 application for a hearing.

6. Reasons why complaint was found to be supported including Subsection of Section 22 relied on

I have accordingly determined pursuant to Section 22(2) of The Ombudsman Act, that the panel of the Board that heard Mr. Doe's appeal exercised its discretion improperly by failing to consider the tenancy agreement which had been entered into.

7. Recommendation including subsection of Section 22(3) relied upon

If it were possible for the Board so to do under the terms of The Residential Premises Rent Review Act, I would have recommended that the Board set aside its order and re-hear Mr. Doe's appeal. However, since a re-hearing is not possible at the present time, it is my recommendation, pursuant to Section 22(3)(g) of The Ombudsman Act that the Residential Premises Rent Review Board not oppose an application for judicial review of the order of the Board should Mr. Doe bring such an application, and that his legal costs on such an application be paid by the Board on a solicitor and client basis.

Arthur Maloney, Q.C.

Date

Covering letter to complainant where
complaint is supported and recommendation
has been implemented

Precedent #10

ARTHUR MALONEY, Q.C.



The Ombudsman | Ontario

- 86 -

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. John Doe,
R.R. #2,
Proton Station,
Ontario. NOC 1L0

Dear Mr. Doe:

Re: Our File No. 8951

My Office's investigation into your complaint
against the [Residential Premises Rent Review Board] is now
complete.

Enclosed herewith please find a copy of my report
containing the results of the investigation conducted which
was sent on October 21st to the [Chairman] of the [Residential
Premises Rent Review Board, Mr. Gordon T. Batchelor]. As you
will see, I found your complaint to be supported, and made a
recommendation, pursuant to The Ombudsman Act, which I
determined was appropriate under the circumstances.

I am also enclosing a copy of [Mr. Batchelor's] reply
dated [October 31st]. You will note that [Mr. Batchelor] has
agreed to give effect to the recommendation contained in my
report.

My Office is pleased to have been of service to you,
and I invite you to contact us again should the need arise.

Yours faithfully,

Arthur Maloney.

Enclosures

[Author's & typist's
initials on copy only]

Precedent #11

ARTHUR MALONEY, Q.C.

- 87 -



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. Gordon T. Batchelor,
Chairman,
Residential Premises Rent
Review Board,
7th Floor,
60 Bloor Street, West,
Toronto, Ontario.
M4W 1E9

Dear Mr. Batchelor:

Re: Our File No. 8926
DOE, Mr. John
35 Law Street
Toronto, Ontario

I refer to your letter dated in
which you indicated that your Ministry [or Board] has
agreed to give effect to the recommendation contained
in my report.

I will be advising the complainant of the
results of my investigation and your response to my
recommendation. In all likelihood, I will also report
on this matter in my next Report to the Legislature.

I would like to thank you and the officials
of your Ministry [or Board] for the co-operation ex-
tended the members of my staff throughout this
investigation.

Yours faithfully,

Arthur Maloney

[Author's & Typist's
initials on copy only]

Arthur Maloney, Q.C.

Precedent #12

- 88 -

SUITE 600

65 QUEEN STREET WEST, TORONTO, ONTARIO

M5H 2M5

TELEPHONE (416) 869-4000

 The Ombudsman | Ontario

May 31, 1978

Mr. John Doe,
111 Main Street,
Toronto, Ontario.
M2M 1E0

Dear Mr. Doe:

Re: Our File No. 0000

This is to advise you that our investigation of your complaint has now been completed, and I now wish to report to you. You will find enclosed a copy of my report to the [governmental organization]. [7(b)]

As you will learn from the enclosed report, I made certain recommendations to the [governmental organization] on [date].

However, on [date] I received a letter from the [official's title] in the [governmental organization] stating that my recommendations will not be implemented.

[Include details about governmental organization's reasons for declining to implement recommendation(s); quote from reply or enclose copy where appropriate. If reply is enclosed, say so.]

Upon receipt of this letter from the [governmental organization], I referred the matter to my legal staff for further consideration. As a result of this effort, I remain convinced that the appropriate response of the [governmental organization] would have been to implement the recommendation(s) I made.

In a case such as this, there would be open to me one further step to be taken and that is to proceed under section 22(4) of The Ombudsman Act which states that:

Page 2
Mr. John Doe
May 31, 1978

"If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fits."

I have decided against proceeding under section 22(4) as I am entitled to do.

[Give reasons for this, such as:

1. Governmental organization has raised a legal obstacle such as lack of statutory authority to implement the recommendation;

2. Governmental organization's position on the facts of the case is not entirely groundless, although Ombudsman's interpretation differs;

3. Although I recognize that to you this is an urgent matter, it is my opinion that your case will not be prejudiced by the passage of further time; - point out the time frame of the complaint; and/or

4. It is my view that resorting to the Premier should be had only where the subject matter of the complaint raises issues of more general concern.

Once having stated the reason for not reporting to the Premier, reiterate the facts of the case that support this reason.]

I do, however, intend to include your case in my next Report to the Legislature which will be submitted to the Speaker of the Assembly in accordance with The Ombudsman Act. My Reports to the Legislature generally contain fairly detailed summaries of one hundred or more cases. Each case is reported without naming the complainant. Particular reference is made to cases where a recommendation I have made has not been implemented.

The Ombudsman | Ontario

Page 3
Mr. John Doe
May 31, 1978

In practice, my Reports to the Legislature are dealt with by the Legislature's Select Committee on the Ombudsman which is comprised of ten members of the Assembly. The Select Committee is empowered by the Legislature to consider, report upon and make recommendations relating to my Reports to the Legislature. Accordingly, the ultimate disposition of your case is in the hands of the Legislature.

I regret that we have been unable to obtain a more favourable result in your case. I and those members of my staff who have expended considerable energies investigating and researching your complaint, wish to thank you for your co-operation and patience and I wish to assure you that we share your disappointment that the outcome was not as I had hoped.

Yours faithfully,

Arthur Maloney.

Enclosure

[Author's & typist's
initials on copy only]

LETTER TO COMPLAINANT: RECOMMENDATION MADE TO A GOVERNMENTAL ORGANIZATION HAS NOT BEEN IMPLEMENTED AND THE OMBUDSMAN IS GOING TO SEND A COPY OF REPORT AND RECOMMENDATION TO THE PREMIER.

- 91 -

Arthur Maloney, Q.C.
Precedent #13



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Mr. John Doe,
111 Main Street,
Toronto, Ontario.
M2M 1E0

Dear Mr. Doe:

Re: Our File No. 0000

This is to advise you that our investigation of your complaint has now been completed, and I now wish to report to you. You will find enclosed a copy of my report to the [governmental organization]. [7(b)]

As you will learn from the enclosed report, I made certain recommendations to the [governmental organization] on [date].

However, on [date] I received a letter from the [official's title] in the [governmental organization] stating that my recommendations will not be implemented by them.

[Include details about governmental organization's reasons for declining to implement recommendation(s); quote from reply or enclose copy where appropriate. If reply is enclosed, say so.]

Upon receipt of this letter from the [governmental organization], I referred the matter to my legal staff for further consideration. As a result of this effort, I remain convinced that the appropriate response of the [governmental organization] would have been to implement the recommendation(s) I made.

In a case such as this, there is open to me one further step to be taken and that is to proceed under section 22(4) of The Ombudsman Act which states that:

Page 2
Mr. John Doe
May 31, 1978

If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fit.

I have decided to proceed under section 22(4) and accordingly will be sending a copy of my report to the Premier.

I also intend to include your case in my next Report to the Legislature which will be submitted to the Speaker of the Assembly in accordance with The Ombudsman Act. My Reports to the Legislature generally contain fairly detailed summaries of 100 or more cases. Each case is reported without the name of the complainant. Particular reference is made to cases where a recommendation I had made has not been implemented.

In practice, my Reports to the Legislature are dealt with by the Legislature's Select Committee on the Ombudsman which is comprised of 10 members of the Assembly. The Select Committee is empowered by the Legislature to consider, report upon and make recommendations relating to my Reports to the Legislature.

I regret that we have been unable to obtain a more favourable result in your case. I and those members of my staff who have expended considerable energies in investigating and researching your complaint wish to thank you for your co-operation and patience and I wish to assure you that we share your disappointment with the outcome.

Yours faithfully,

Arthur Maloney

Enclosure
[Author's & typist's
initials on copy only]

LETTER TO GOVERNMENTAL ORGANIZATION: WHERE OMBUDSMAN HAS MADE A
RECOMMENDATION; IT HAS NOT BEEN
IMPLEMENTED & OMBUDSMAN IS NOT
GOING TO THE PREMIER

- 93 -

Arthur Maloney, Q.C.
Precedent #14

 The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

Dear [Head of Governmental Organization]:

Re: Our File No. 0000
Mr. John Doe,
111 Main Street,
Toronto, Ontario.

Further to your letter of [date] in which you
advised me that you [do not intend to] or [are unable to]
implement the recommendation(s) contained in my report in
this matter, I wish to inform you that I have decided against
sending a copy of my report to the Premier.

As you know, I would be entitled under section 22(4)
of The Ombudsman Act, 1975 to send a copy of my report and
recommendations to the Premier if within a reasonable time
after the report is made, no action has been taken which seems
to me to be adequate and appropriate.

I will, however, be referring to this case in my
next Report to the Legislature.

Yours very truly,

Keith A. Hoilett,
Temporary Ombudsman.

c.c. [the Minister]
[Author's & typist's
initials on copy only]

LETTER TO GOVERNMENTAL ORGANIZATION: WHERE OMBUDSMAN HAS MADE A
RECOMMENDATION; IT HAS NOT BEEN
IMPLEMENTED & OMBUDSMAN IS GOING
TO THE PREMIER



The Ombudsman | Ontario

- 94 -

Arthur Maloney, Q.C.

Precedent #15

SUITE 600

65 QUEEN STREET WEST, TORONTO, ONTARIO

M5H 2M5

TELEPHONE (416) 869-4000

May 31, 1978

Dear [Head of Governmental Organization]:

Re: Our File No. 0000
Mr. John Doe,
111 Main Street,
Toronto, Ontario.

Further to your letter of [date] in which you advised me that you do not intend to implement the recommendation(s) contained in my report in this matter, I wish to inform you that I have today sent a copy of my report and your letter of [date] to the Premier pursuant to section 22(4) and (5) of The Ombudsman Act, 1975.

For your convenience, these subsections are set out hereunder:

S. 22(4): "If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fit."

S. 22(5): "The Ombudsman shall attach to every report sent or made under subsection 4 a copy of any comments made by or on behalf of the governmental organization affected."

Yours very truly,

Keith A. Hoilett,
Temporary Ombudsman.

c.c. [the Minister]

[Author's & typist's
initials on copy only]

- 95 -

ARTHUR MALONEY, Q.C.



SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 31, 1978

The Honourable Wm. G. Davis, Q.C.,
Premier of Ontario,
Legislative Buildings,
Queen's Park,
Toronto, Ontario.

Dear Mr. Davis:

Re: Our File No. 0000
Mr. John Doe,
111 Main Street,
Toronto, Ontario.

Enclosed is a copy of my Report and recommendation(s) arising out of my investigation of a complaint by [name of complainant] concerning the [governmental organization].

Also enclosed is a copy of [head of governmental organization's] letter of reply of [date].

I am sending this material to you pursuant to section 22(4) and section 22(5) of The Ombudsman Act, 1975.

Yours faithfully,

Arthur Maloney.

Enclosures

[Author's & typists
initials on copy only]

IV THE OFFICE OF THE OMBUDSMAN FROM THE
POINT OF VIEW OF THE ONTARIO PUBLIC

CHAPTER IV

THE OFFICE OF THE OMBUDSMAN FROM THE POINT OF
VIEW OF THE ONTARIO PUBLIC

Mention has already been made in the Preface of the programme of public hearings that was undertaken during the first year of the Ontario office's operation. On the occasion of each of these hearings, in addition to making the office's staff available for the reception of private complaints, members of the public were invited to make suggestions or proposals as to how the Ombudsman and the members of his staff might better serve their respective communities. Between November, 1975 and June, 1976 no fewer than twenty-five such hearings were convened in centres throughout the province. By way of example of the sort of introductory remarks that preceded these open forums is the following excerpt taken from the transcript of the hearing conducted at North Bay, the first of these hearings:

MR. MALONEY "...I intend to hold hearings such as this one throughout the province, in order that the people of Ontario may have an opportunity in their own communities to counsel me as to how I might best serve their interests within the terms of reference conferred upon me by the Legislature.

...I want to repeat, today the hearings are public. You know my terms of reference as I have explained them to you and while I don't intend to lay down any strict rules I would ask you to do your best to keep within those terms of reference as you give me the benefit of your advice and your thinking. I want you to tell me your views as to the kind of staff you think the office of the Ombudsman needs, what kind of expertise it ought to have, how does it make itself realistically accessible to the residents of Ontario? Through branch offices in Western Ontario and Eastern

Ontario, South-Western Ontario, - here in the North? Are these the answer?

Would you agree that in order to keep down expenses such branch offices could be located in an existing government facility? Generally, what advice do you give me as to how I ought to function in order to give you the best service".

The response on the part of the public was extremely encouraging. During the course of these hearings, approximately 2,000 persons, male and female, old and young, rich and poor, from all manner of ethnic backgrounds and drawn from every sector of Ontario, attended at these gatherings and spoke out about their concerns and proposals regarding the functioning of the Ombudsman's office. This chapter attempts to present in a summary form the various matters raised at these hearings and properly falling within the terms of reference of our investigation. In so saying, it should be borne in mind that an attempt has been made to be representative, and the references should not be taken as being exhaustive of all of the opinions expressed nor even a summary of all of the views expressed by those whose comments are reproduced.

Regional Offices

Reviewing the submissions made at the public hearings in their entirety, without doubt the recommendation most frequently voiced was that the Ombudsman's office would be assisted by the creation of either one or more regional facilities operating in conjunction with the main office located in Toronto. The principal reason advanced in support of this proposition was that any

such branch office would facilitate the reception of complaints in the area where it was established. Incidental to this purpose would be the fact that a branch facility would inevitably serve to improve the Ombudsman's staff's understanding of the nature of the problems experienced in areas of the province other than Toronto and at the same time such a facility would enhance the office's credibility in those areas which have traditionally had to look to Toronto as the seat of all government activity. As one person noted at the public hearing in Cochrane, his comments subsequently appearing in the March 4, 1976 edition of the Northland Post:

"Right now, we wait so long for an answer to a problem, which must go to Toronto for a decision, that by the time you get a reply, the problem no longer exists or has changed completely".

Although there was near-unanimous agreement on the need for regional facilities, there was no clear consensus on the questions of either the number of such facilities or where such facilities should be located. Suggestions ranged from Whitby and Brantford to Moosonee and a variety of centres in-between. To be fair, however, the weight of the opinion expressed was that the need for such an office or offices was particularly urgent in the North but not to the same degree elsewhere. The sentiments of the public in this regard may be discerned through a reproduction of some of the ideas and opinions expressed on this topic.

In North Bay, Mr. Edward Deibel made representations to Mr. Maloney concerning the general alienation from the rest of the province experienced by the people in Northern Ontario and expressed

the view that generally speaking the government is "out of touch with the needs of the people in the north". He went on to state:

"Mr. Maloney, I think the office of the Ombudsman has to be simple, straightforward, it has to have an office with a sense of fairness and justice and very simple to get at, because if we have to go through the bureaucracy of governments to get at the Ombudsman then the usefulness of the Ombudsman's office is wasted. So that the idea of having offices in northern Ontario, I think it probably would be one way of giving service to those people in the north quickly and easily".

In much the same vein, Mrs. Wilson in Thunder Bay commented in the following terms:

"I agree with the two people that were up previously saying that we should have an Ombudsman regional office here. I think it would be really great. We are so far from Toronto and there are a lot of people of course that wouldn't get down there or just wouldn't know who to write to or know of an address. I listen to this Talk-Back pretty near every day and there are so many people on there enquiring as to what they should do about a certain matter. There are people after people just continuously and I think if we had an office of your calibre here a lot more people would partake of it. As they say they get 200 calls a month and I am sure that if they knew there was an office with people in it of the people that are with you that we would really benefit by it. And not only the Lakehead but we have a big region all around us, small communities and the farmlands, no large cities or anything between Winnipeg and North Bay, but we do have a lot of small communities and all the people who are scattered live out in the country and have to come in by car and this sort of thing and I am sure you could be of help to these people. This is my idea of an Ombudsman and I think it is one of the greatest things that has ever come to the Lakehead".

Indicative of the lack of consensus as to the possible location of a regional office and the diversity of opinion regarding the territory that might be served by a branch office, the comments of Ms. Margaret Philip speaking at the public hearing in Thunder Bay are of interest:

"...yes, I would hazard a guess that most of the people gathered here today agree that regional offices would be an asset. I would comment too that while the feelings and attitudes of people living in Northern Ontario are very similar to those of us living in North-Western Ontario, Northern and North-Western Ontario are very distinct regions. Our feelings towards Toronto, for example, and towards Queen's Park are the same. But there is not a community of interest extending between Northern and North-Western Ontario. They are two distinct regions. So at the very minimum I think we are talking about two offices and I would suggest that even that is not enough because it is a long way from North Bay to Kapuskasing and it is a long way from Manitouwadge to Keewatin".

The excerpts reproduced above are only a few of the many representations made at public hearings all over Ontario, particularly in the northern parts of the province, supporting the idea of regional branch offices. It was a concept to which the Honourable Leo Bernier, presently Minister of Northern Affairs, lent his support at the public hearings in Kenora. Those attending the public meeting in Cochrane also endorsed this idea although there, as in a number of other centres in the north, the work of the Northern Affairs Officers was acknowledged and applauded. But as one member of the audience put it on that occasion, "they have too great an area to cover and too great a work load".

By way of general comment on the need for a regular and

continuing presence of the Ombudsman other than in the province's capital, the comments of Ms. Margaret Philip are again appropriate:

"You see I think that one of the problems that you are going to encounter is that the people who need you most are the people who least know about you and consequently there is a great deal that needs to be done about reaching the people who do not understand your position and your services. I think perhaps that can be expedited with people at a more local level".

Supplementing these representations of a more general nature there were a number of specific and detailed recommendations regarding the establishment of regional offices. One of these was a proposal put forward by Mr. B.E. Curtis, the President of the Confederation College of Applied Arts and Technology in Thunder Bay. Following upon the public hearing in Thunder Bay Mr. Curtis wrote a letter to the Ombudsman's office on January 20, 1976 outlining the potential merits of a regional office located at and in cooperation with the Confederation College. Among the possible benefits of such an office, Mr. Curtis listed access to material resources and to the off-campus (Community Services) network throughout the north as well as the availability of concerned students obtaining practical career and social experiences, all of which would be with little cost to the office yet with independence of government or civil service interests. Another specific recommendation was that of Mr. Terence Murphy on the occasion of the public hearing in Sault Ste. Marie. He suggested that in order to service northern Ontario a regional office for the Ombudsman should be established in Sault Ste. Marie with satellite offices in North Bay, Timmins, Thunder

Bay and Kenora. This proposal that an office be established in Thunder Bay received the support of Thunder Bay Times News-Chronicle Journal. In its edition dated May 3, 1976, that paper included the following comment:

"We need an Ombudsman more than any other group in this province. Our isolation from Toronto, from government, from media and from expert guidance leaves us almost completely at the mercy of bureaucracy".

As will be seen in the concluding chapter, Mr. Murphy's suggestion forms the basis for the recommendation regarding regional facilities in Northern Ontario contained in this Report and first outlined in the Ombudsman's Fourth Annual Report to the Legislature.

In the event a regional facility were established, another matter of concern was, consistent with the independence of the Ombudsman, should it be located in quarters separate from any governmental building? Public opinion on this question was more or less evenly divided. The views expressed at the hearing in Thunder Bay were representative of the division of opinion on this topic, ranging from Mr. Barry's "as to the building locally, if the cost factor became prohibitive I don't see any objection to having it housed in a government building" to Ms. Philip's "some government buildings I think would not be appropriate". As an interesting adjunct to this issue of the housing of the office, it was suggested on numerous occasions that any regional office might be established as a store-front operation. To be fair, however, compared with the overwhelming support for the creation of such an office, these questions regarding its location and format seemed to be matters of only minor concern.

Periodic Visits

Closely related to the subject of regional offices was the frequently-heard suggestion that either in conjunction with regional offices or as an alternative to them the Ombudsman might consider routine periodic visits to centres throughout the province. The suggestion was that these hearings might follow the pattern of the private aspect of the programme of public hearings whereby members of the Ombudsman's staff were available for the reception of private complaints. Referring to the problems that would inevitably be encountered in connection with the location of branch facilities, both in terms of distinct geographical areas not capable of being serviced by a single branch office and the difficulties that would still be faced by small and inaccessible communities even if a branch office were located closer to them, Mr. Deibel suggested in North Bay:

"So I think what you have to do is, you might even have to have a roving office, an office that will move, from community to community".

Support for this idea was heard on numerous occasions during the course of the public hearings. On more than one occasion it was specifically suggested that a train tour of some of the small communities in the north would be an excellent way to both communicate with the people of these communities as well as improving the office's understanding of their peculiar problems. This theme was picked up in the June 12, 1976 edition of the Sudbury Star in which the following excerpt appears:

"Moving about the province has proved to be a worthwhile venture because more than one thousand persons have made use of the office through interviews conducted while the staff was in the community. A member of the Ombudsman's staff was quoted as saying "we had the feeling that they wouldn't have come to us if we hadn't come to them".

The Ombudsman's Jurisdiction

At the time of each of the public hearings an attempt was made to explain to the assembled members of the public the exact nature and extent of the Ombudsman's jurisdiction. Broadly speaking, one conclusion that could be drawn from the representations of those who chose to make submissions was that the precise limitations on an Ombudsman's ability to investigate an act or decision were not clearly understood. In addition, it was apparent from the submissions of a number of persons that they felt that the scope of the Ombudsman's jurisdiction should be expanded. Specifically, one item of common concern was that the Ombudsman was precluded from investigating the acts and decisions of municipal officials. A member of the audience at the hearing in Sarnia complained of the fact that in many instances the Ombudsman was precluded from investigating decisions of organizations although they were substantially funded and their activities directed by the province. Other specific proposals were that the Ombudsman's jurisdiction be expanded to include nursing homes and public hospitals, educational institutions and their curricula as well as decisions made by the courts.

Staffing the Ombudsman's Office

An item of common concern was the extent to which the various ethnic groups which comprise the population of Ontario were represented in the staff of the Ombudsman's office. It was suggested that members of ethnic minorities should not only feel that they have a representative of their point of view in the office but should also be able to communicate with the office in their native language in the event they do not feel comfortable in English or French. Along these lines, of particular interest was the often-repeated query as to whether native Indians had their own representative in the office to whom they might refer their problems.

The Ombudsman's Office Must Guard Against Itself Becoming a Bureaucracy

A further recurring matter of concern with which Mr. Maloney was confronted in hearings all across the province was that he should guard against his office itself becoming a bureaucracy. A large number of people indicated that their essential complaint was not so much concerning the answer they got from government as the effort required to obtain that answer and it was hoped that this would not become the case insofar as the office of the Ombudsman was concerned. Mr. Maloney invariably pointed out to such persons that as far as he was concerned this would never become the case with his office. According to him, a bureaucracy is not measured solely by the number of people who work in an organization; rather, a bureaucracy is measured by its ability to respond to petitions and his plan was to offset any tendency to immobility by decentralization of his organization. But he was also always careful to point out that if he were to perform the tasks expected of

him, having regard to the size of the province and its population, the number of ministries and boards and agencies under his jurisdiction, and the collective numbers of their staffs, he really required a rather large staff with a wide range of expertise, not least because of the possibility of confrontations that must inevitably take place from time to time between the office of the Ombudsman on one hand and the government on the other.

Other Recommendations

A number of other specific recommendations were made to Mr. Maloney in the course of the public hearings. One such suggestion was that secretarial services be considered to assist complainants who might otherwise have difficulty communicating their complaint to the Ombudsman's office. It was also suggested that the Ombudsman's office gear its hours for the reception of complaints to the available time of most complainants, that is to say, in the evening hours. It was recommended that consideration be given to the amendment of the provision of the Ombudsman's Act which provides that all existing avenues of appeal be exercised or the time for their exercise have expired before an investigation could be commenced so that the Ombudsman could intervene in cases where in his opinion it would be unreasonable to require such an appeal. Lastly, it was suggested by several members of the press at one hearing that Mr. Maloney should perhaps move to secure the right to release regular press reports concerning cases of special interest to the public and the media rather than having to abstain from releasing any such information except by way of a formal report in circumstances where a situation had not been rectified to the Ombudsman's satisfaction.

V LEGISLATIVE DEBATES CONCERNING THE
OFFICE OF THE OMBUDSMAN

CHAPTER V

LEGISLATIVE DEBATES CONCERNING THE
OFFICE OF THE OMBUDSMAN

New Zealand, Great Britain, five Australian States and nine of the provinces of Canada are among the jurisdictions which have, in the past fifteen years, introduced an Ombudsman or a similar official inspired by the Scandinavian model. These jurisdictions possess comparable governmental, administrative and legal processes; moreover, the provisions of the legislation creating the office in several of these jurisdictions are in many respects similar. Reference has already been made to the benefit that was derived in the initial organization of the office in Ontario from the concerns and recommendations expressed by the Members of the Legislative Assembly during the course of the debate which took place on the Ombudsman legislation in this province. Having regard to the input derived from this source it was thought appropriate in considering the organization of an office best designed to serve the needs of the people of Ontario to examine the legislative debates concerning the Ombudsman legislation in jurisdictions other than Ontario. This chapter is devoted to an overview of the research conducted in connection with this aspect of our investigation.

In addition to a number of specific suggestions that can be derived from a review of these debates, one cannot help but be struck by the many similarities in their content. By way of example, the need for an Ombudsman at all has been a constantly recurring theme. Opposition Parties in all four countries have expressed their concern that such an office would result in either

needless duplication of the members' function or active competition between the members and the Ombudsman that would lead to the alienation of their constituents from the legislative representatives. The validity of this concern is something that can only be assessed in the light of the experience of the respective offices that have been created but speaking generally it is probably fair to say that this is a fear that has proved largely unfounded.

As another example, the length of tenure of Ombudsmen in other jurisdictions varies widely and is a topic about which comment has almost invariably been made. In Australia, an appointment of indefinite duration was criticized as granting the Ombudsman too much independence from the legislature; in Manitoba and Nova Scotia, on the other hand, six and five year terms of office respectively were criticized for not providing the Ombudsman with enough freedom from government.

The Opposition in every jurisdiction has expressed its concern regarding restrictions or limitations imposed upon the Ombudsman's jurisdiction. The inability of Ombudsmen in Great Britain, New Zealand and several Canadian provinces to investigate complaints regarding such areas as hospitals, government-controlled corporations and municipalities has been the cause of much criticism. Another frequent and related concern was the Ombudsman's exclusion from an investigation of "matters of national security" or "government policy"; members from a number of provinces, states and countries have decried the ability of the government to preclude an Ombudsman's investigation by defining possible administrative action in these ambiguous terms. Members in Australia and Great

Britain particularly criticized the exclusion of cabinet members (as distinct from cabinet decisions) from the Ombudsman's jurisdiction.

There were also a number of more specific items of common concern. To mention a few, the members of the legislative assemblies in both Ontario and Saskatchewan objected to the necessity of complaints being reduced to writing. Those in New Brunswick and Nova Scotia spoke out against the Ombudsman's exclusion from investigation until all other appeals were exhausted. Interestingly, a common cause of complaint was the lack of provision for the Ombudsman to approach the Legislature more than once yearly. Along the same lines, it is significant to note that spokesmen from Ontario, Quebec, Nova Scotia and New Zealand all thought that the Annual Report did not link the Ombudsman closely enough with the Assembly to which he is responsible.

By comparing these debates and focusing on the recurrent topics of concern it is possible to discern the prevailing attitudes among elected members towards the introduction of an Ombudsman. At the same time, by noting their specific concerns and proposals, certain conclusions regarding the possible improvement of the office are suggested.

The Province of Ontario

The extensive debates in the Ontario Legislature on The Ombudsman Act, 1975 took place in May and June, 1975. Comments and criticisms of the members fell within four broad categories, here

termed Qualifications for the position, Administration of the office, Relationship with the Legislature, and extent of Jurisdiction. The first section dealt with both Mr. Maloney personally and the Ombudsman in general; the second with funds, staff and organization; the third with the Annual Report, restrictions of secrecy, length of tenure, and the role of both the assembly and the M.P.P. in relation to the Ombudsman; and the fourth with local affairs and a proposed referral service for non-jurisdictional complaints.

(i) Qualifications

Representatives from all three parties joined in expressing their satisfaction at the choice of Mr. Maloney to fill the position of Ombudsman for Ontario. Question was made Mr. Ruston (L., Essex-Kent) of the appropriateness of a lawyer for the post, since a non-lawyer would, perhaps, be better able to deal with mal-administration. Mr. Renwick, (N.D.P., Riverdale) noted that the British Parliamentary Commissioner was a senior civil servant rather than a lawyer. It was agreed by the Attorney General that Mr. Maloney's legal background ought not to be considered a precedent for future "Ombudspersons'" qualifications and that in the present case it was merely a matter of picking the right person for the job. (12.06.75, pp. 2896-7)

(ii) Administration

The consensus of opinion in the Assembly was that the Ombudsman should be given the opportunity, at the outset, of determining the requirements of the Office. The Attorney-General, Mr. Clement, was certain that the Legislature would support any budgetary move

of Mr. Maloney's:

"When he comes in here for his resources... I am confident this Assembly will be very supportive, because who is going to oppose it? He has to demonstrate his case and say: "I need these resources... and you are going to have to support it. If you don't then the office won't function." I think it is going to have to be based on his experience as he sees it unfold." (19.06.75, p.3183)

Mr. Lawlor (N.D.P., Lakeshore) felt that a large office would be inevitable:

"It is going to cost a substantial sum of money to run this office, beginning with the Ombudsman himself and with the various types of experts he will require."

As a precedent for such a large operation, Mr. Lawlor cited the Swedish Ombudsmen, whose offices were "massive affairs". (10.06.75, p. 2814)

Mr. Laughren (N.D.P., Nickel Belt) noted that the large number of stored-up complaints would necessitate an initially sizeable staff, but Mr. Burr (N.D.P., Sandwich-Riverside) and Mr. Ruston warned against its becoming too large. The former reminded the government that it already had "117 part-time more or less, amateur ombudsmen" (12.06.75, p. 2885) while the latter pointed out that "a large staff" would "defeat the purpose of what we really want," especially if it was to be located only in Toronto. (12.06.75, p. 2898)

There were many proposals pertaining to the structure of the Office. Messrs. Laughren and Renwick advocated regional branches throughout Ontario (12.06.75, p. 2876; and 19.06.75, p. 3142 respectively) and Mr. Reid (L., Rainy River) pointed out "that Northern Affairs officers of the Ministry of Natural Resources might be

[utilized as] an adjunct to a branch office scheme." (12.06.75, p. 2900-1) Mr. Reid also thought that brochures to inform people of the role and function of the Ombudsman would be an asset. (12.06.75, p. 2900) To facilitate this dissemination of information about the Ombudsman, Mr. Samis (N.D.P., Stormont) suggested regular tours of duty around the province and Mr. Laughren proposed that the Office contain "a mobile department" to "cater to the small, extremely inaccessible communities in Northern Ontario." (12.06.75, p. 2876) Mr. Renwick advised the creation of "specific sections or departments within the Office," dealing with W.C.B. etc. on a full-time basis. Several members mentioned the desirability of a multi-lingual staff. Mr. Newman (L., Windsor-Walkerville) was joined on this issue by Mr. Samis, who expressed specific concern for the Franco-Ontarians, and by Mr. Singer, who noted that Mr. Maloney "should have available in his office ... people who can write out complaints for other people who want to complain but can't write properly." (12.06.75, p. 2880)

(iii) Relationship with the Legislature

The first of the two main concerns regarding the Ombudsman's Annual Report to the Legislature centred around its publicity. Mr. Reid noted that "there is no provision in the Bill for the members to debate the report." He thought there should be "a mechanism so that we can debate the report of the Ombudsman, because in the final analysis, it is going to be public opinion and the glare of publicity that may effect some change." (10.06.75, p. 2844) Mr. Laughren also thought that the Ombudsman's "should be a very, very public office" (12.06.75, p. 2876), and Mr. Lawlor drew attention to the legislation

in Saskatchewan (Section 30) where the Ombudsman could "in the interests of any person ... publish reports relating generally to the exercising of his powers". (12.06.75, p. 2911)

The second concern over the Annual Report pertained to its frequency. Mr. Reid thought that the Ombudsman "should be encouraged to report" whenever "there is a particular problem" (10.06.75, p. 2850) and Mr. Singer agreed that "it is important that we get regular reports". (12.06.75, p. 2880) Mr. Renwick was particularly concerned over this section (12) of the Act:

"The point that concerns me about this provision in the Bill which provides for the Ombudsman reporting annually ... is that it does not provide a vehicle by which the Ombudsman can report to the Assembly as and when he sees fit."
(12.06.75, p. 2909)

He proposed an amendment to Section 12 enabling the Ombudsman to report more frequently to the Assembly but this was defeated, since the majority of the committee felt there was adequate provision under Section 22 (4) for reports to the Assembly.

Mr. Renwick also felt strongly that the Ombudsman was restricted by the oath of office and secrecy to a formal relationship with the Assembly, and that the members "will have little, if any, opportunity to question him about any matters" since "he will not, except in accordance with Section 13 (2), disclose any information." (10.06.75, p. 2820) To circumvent this problem, Mr. Renwick proposed that the Ombudsman "report to a select committee of this Assembly and the select committee pick up where [he] leaves off." (10.06.75, p. 2821) The committee should "have the rules settled and promulgated for the time when the Ombudsman ...takes over," and then "continue to sit as a select committee indefinitely." In this way,

it could, "in consultation with the Ombudsman" carry through "on the criticism of whatever departments of government ... deserve that criticism for maladministration." (19.06.75, p. 3153) The Attorney-General agreed with these recommendations, and remarked that they could form the backbone of the creation of the committee.

There was general agreement in the Assembly that a ten-year term of office would ensure the Ombudsman's independence from the legislature. Mr. Renwick stated that "the Bill, in so far as the tenure of office and that aspect of the appointment are concerned, is satisfactory," and Mr. Reid remarked that "it really is a minor point." (10.06.75, p. 2843)

Mr. Cassidy (N.D.P., Ottawa Centre) raised some doubt regarding the Ombudsman's independence from the Executive, who "could be sticky about granting pay increases" (10.06.75, p. 2848), and Mr. Samis had some misgivings concerning a loss of objectivity with a long tenure, stating that he would "prefer to see it reduced to five or seven years" as was the case in other Canadian provinces.

Some members expressed their concern that the Ombudsman would be their "competitor." Mr. Parrott (P.C., Oxford) found it "a little difficult to accept that the Ombudsman will have sufficient staff and ... facilities to investigate and then report and suggest actions, whereas the member would have very little facility by comparison". He would prefer that "the prime relationship between the Ombudsman and the people of Ontario should be through the member." (10.06.75, pp 2837-9) Mr. Laughren too hoped that "the Ombudsman would seek advice from the members." (12.06.75, p. 2876)

In the main, however, the M.P.P.'s felt that the Ombudsman would supplement without supplanting their role. Mr. Lawlor drew attention to the Ombudsman's being "a creature of this Assembly designed to safeguard us against" the Executive. Mr. Foulds (N.D.P., Port Arthur) noted, as a criticism of the Act, that "the Bill, in an unfortunate way does not relieve the case load ... of the M.P.P. at all because of clause 15 subsection 4." (12.06.75, p. 2882) Mrs. Campbell (L., St. George) assured that "it can no longer even in the minds of the government be intended that the Ombudsman is in any way going to make members of this Legislature obsolescent in their duty to their constituent." (10.06.75, p. 2882) Mr. Samis summed the matter up, asserting that provided "the Legislature does not attempt to trample and confine and hem in Maloney ... and the M.P.P. and the Ombudsman can keep each other informed, the people will be better served and have a better sense of justice." (12.06.75, p. 2886)

(iv) Jurisdiction

Several members were in favour of the Ombudsman having municipal jurisdiction. Mr. Lawlor objected to the government's complete disregard for "McRuer's monumental report," contrasting Mr. McRuer, who "went precisely to the local scene and had local Ombudsmen" but disparaged the appointment of "an overall Ombudsman," with the government which, "in doing one ... doesn't do the other. What McRuer rejected, in his Legislation the Minister accepts; and what he accepted, the Minister rejects." (10.06.75, p. 2814) Mr. Cassidy suggested that "this matter, if it can't be resolved during

the course of this particular debate, should probably be put on the Agenda of the Provincial Municipal Liaison Committee." He cited Denmark as a case where "under a legislative framework which is similar to ours, the municipalities ... were eventually brought in" despite "resistance by the municipal jurisdiction." Mr. Cassidy pointed out "local health inspectors, local boards of health, and ... general welfare assistance" as some of the many instances where municipal offices were responsible for administering provincial legislation. (10.06.75, p. 2848)

Mr. Renwick suggested that one of the functions of the office could be to act as a clearing house for extra-jurisdictional complaints. He felt that "the job of the Ombudsman is equally not only to investigate complaints which are within his purview, but also to assist the citizen in selecting the proper forum within which his particular complaint can be investigated, if it can be investigated at all." (17.06.75, p. 3089)

Many M.P.P.'s made proposals directed towards the successful adoption of the Ombudsman concept by the Province of Ontario in the course of the debates on Bill 86. A number went on to indicate that they expected Mr. Maloney, then the Ombudsman-designate, to approach the office in the light of that legislative discussion. Mr. Renwick went so far as to state:

"I am hopeful that the Ombudsman-designate will read what's being said in the debates because I think it's very important..."
(17.06.75, p. 3089)

The Province of Alberta

Albert Hansard was not in existence at the time George McClellan was first appointed Ombudsman in 1967. For this reason it is difficult to document and analyze the chief concerns of Alberta MLAs on the subject of the first Canadian Ombudsman legislation. The debates at the time of the two amending Acts in May, 1972 and April, 1974,² however, provide some indication of the members' reaction to the actual operation of the office subsequent to its inception.

The principal topics of discussion at the time of the Ombudsman Amendment Act, 1972, were the need for an Ombudsman at all, and the proposed increases in his salary and powers. A number of members (most of whom had opposed the initial establishment of an Ombudsman) asserted that five years on the job had not increased the necessity for an Ombudsman. They felt that the MLAs were capable of protecting the rights of their constituents, especially after the passage of a Bill of Rights.

Nearly all of the members who spoke on the Act mentioned the increase in the Ombudsman's salary, from \$20,000.00 to \$30,000.00 yearly. While a small number of the MLAs defended the raise, the majority were opposed to a 50% increase (though all were careful to note that they were in no way criticizing the performance of Mr. George McClellan as Canada's first Ombudsman). Many of the speakers also remarked the Act's extension of the Ombudsman's powers of discretion. The ability of the Ombudsman under the Act to refuse to hear any complaint was criticized as not guaranteeing every citizen the right to be heard.

Under An Act to Amend The Ombudsman Act, 1974, provision was made for the Ombudsman to investigate matters relating to municipal maladministration. Comments in the Legislature on this Act indicated many members' fears that another bureaucracy was in the process of being established. There were repeated references to the increased number of investigators that would be needed by the office. In the end the matter was postponed until details could be worked out to the satisfaction of the majority, and a select committee of the Legislature was appointed to consider the issue.

April, 1974 saw discussion not only of the amending Act, but also the appointment of Dr. Randall Ivany as Alberta's second Ombudsman. Most of the remarks concerning Dr. Ivany noted the excellence of his qualifications for the job. One member expressed the hope that the new Ombudsman would make more of an effort to travel than did his predecessor. Regular tours of duty around the province were suggested, so that all Albertans could experience the benefits of the office.

The Province of Manitoba

The debates on Manitoba's Ombudsman legislation took place between August 28, 1969 and September 29, 1969. Some further discussion pertaining to the Annual Report that was tabled in the Legislature on May 5, 1975, took place from May 5-12, 1975. ³ Members touched on the importance of choosing the right man for the job, length of tenure, interference with Crown prosecutions, restrictions, budget and size of staff, relationships between the M.L.A. and the Ombudsman, and complaints of a "political" nature.

The actual choice of the Ombudsman was recognized by the members as being of prime importance to the success of the office. Of particular significance was the first appointment; indeed, the attitude of the first Ombudsman to his job, and that of the government to the first Ombudsman, were considered by several M.L.A.s to be the two chief indicators of the worth of the whole plan.

Some members objected to the brevity of the Ombudsman's stay in office (under the proposed legislation he would serve a six-year term with one possible re-appointment). They thought that a maximum of twelve years on the job did not provide adequate security for a younger man to take it on, which would mean that the only candidates to choose from would be close to retirement age. Other M.L.A.s voiced their disagreement with dismissal procedures. Rather than a two-thirds majority in the Assembly, they proposed that a simple majority with the leaders of all three parties in agreement would suffice; this would, perhaps, give the Assembly more control over the Ombudsman. Another proposal to limit the Ombudsman's power concerned his ability to interfere with Crown prosecutions (Manitoba Legislation differs from Ontario's at this point, vide Section 15 (4)(b) of the Ontario Ombudsman Act). Several members, quoting from New Zealand and Alberta legislation to support their view, wanted this power removed from the Ombudsman's jurisdiction.

Objection was also made to there being too much control over the Ombudsman. Bill 25 permitted the Attorney General to disallow the Ombudsman's intervention in any given case, and some members warned that the Attorney General could seriously hamper the former's activities. One member cited Denmark as a jurisdiction

where the Ombudsman could actually act against the government on behalf of the Opposition, and another stated that the Ombudsman should not hesitate to intervene merely because of "politicality". To these arguments the Attorney General replied that the Ombudsman could report to the Legislature if his actions had been in any way hampered, and that the limiting role of the Attorney General could well be discontinued after a few years.

Most of the members agreed that the Ombudsman's office should be fairly sizeable operation, one member proposing that provision be made for a cost-of-living increase in the Ombudsman's salary, and another suggesting that the budget required by the Alberta office would probably be a good indicator for Manitoba. It was pointed out, however, that the staff should not become too large and bureaucratic so that the office became impersonal.

Several members were concerned that the Ombudsman would act as their competitor, and indicated that they were capable of handling their constituents' complaints themselves. In response, the Attorney General replied that the chief function of M.L.A.s was a legislative one, and that the Ombudsman's larger staff and greater powers of investigation would not only assist a larger percentage of the members' constituents, but would also free members to devote more time to a proper consideration of their role as legislators in a responsible democracy.

The Province of New Brunswick

The debates concerning the New Brunswick Ombudsman legislation (Bill 43) took place on May 10, 1967.⁴ There were few

comments designed to amend the legislation or aimed at improving the office's function. Instead, members concentrated on the definition and clarification of the Bill, especially with respect to jurisdiction.

There were two questions that did not concern jurisdiction. The first of these dealt with the Ombudsman's removal from office by a majority vote of the Legislature, and the second with the standing of the Ombudsman's employees vis-a-vis the Civil Service Act. Upon being informed that the first query was dealt with in a later section of the Bill, and that the employees of the office would indeed be under the Civil Service legislation, the members devoted their full attention to the problem of jurisdiction.

This discussion was opened by a request for a comprehensive list of all departments and agencies of government not considered as being within the Ombudsman's purview. Question was then made of his being precluded from investigation of such agencies as the Workmen's Compensation Board or the Liquor Control Board owing to the existence of rights of appeal within those agencies. Several members expressed the view that the legislation might be too restrictive with reference to the Ombudsman's powers of investigation following an appeal, although no amendment was put forward in an attempt to change the appropriate section of the Bill. An additional comment on Bill 43 dealt with the restriction placed on the Ombudsman in his being allowed to investigate only those matters that were outside of an appeal to a court of law. There was also some comment pertaining to the Ombudsman's ability to investigate cabinet members. When the Premier included the obtaining of permission from the

Attorney General as a prerequisite for ministerial questioning, several members expressed their concern that the Attorney General would then have too much power with respect to his cabinet colleagues.

The Province of Newfoundland

Newfoundland established a provincial Parliamentary Commissioner's office in 1970. Unfortunately, Newfoundland Parliamentary Debates was not in existence at that time. Areas of legislative concern regarding the office are, therefore, not discernable until 1975, when An Act to Amend the Parliamentary Commissioner (Ombudsman) Act was introduced.

Discussion of the amending Act took place February 25, 1975.⁵ The primary concern of members at this time appears to have been the actual selection of a Commissioner. Opposition M.L.A.s underlined the importance of his not being associated with any political party, since the proposed salary increase to \$28,000.00 yearly would make him one of the most highly-paid officials in the province.

The Province of Nova Scotia

The discussion of the Ombudsman concept in the Nova Scotia Legislature took place on December 17, 1970.⁶ The only significant response to the government's proposal to institute the office of the Ombudsman came from Mr. Akerman (Cape Breton East). This summary will, therefore, deal primarily with his comments, which focused for the most part on the possible restrictions on the Ombudsman contained in the Bill.

Mr. Akerman prefaced his remarks by commending the government for including certain sections in Bill 4. The confidentiality of inmates' mail, the Ombudsman's impartiality, and particularly his jurisdiction over municipal officials were among the provisions singled out in this section of Mr. Akerman's remarks. Other members also congratulated the government on the inclusion of local maladministration within the Ombudsman's purview.

The main thrust of Mr. Akerman's speech commenced with an expression of concern for the independence of the Ombudsman. Attention was drawn to his being appointed by the Executive, to the brevity of his time in office (five years, although he was eligible for re-appointment), and to the Executive's power to dismiss him from office if the legislature was not sitting at that time.

Further reference to the Executive was made later in Mr. Akerman's speech, when he expressed his dissatisfaction with Section 10(b) of the Bill. By this section, cabinet proceedings were held to be outside of the Ombudsman's jurisdiction; Mr. Akerman considered this to create loopholes for the Executive, since the definition of a cabinet proceeding was not specified.

Mr. Akerman and several other members noted the restriction placed on the office by Section (18)(b) of the Bill, whereby the Attorney General could decide if "the answering of any question or the production of any document" would be "injurious to the public interest". If he so decided, then the Ombudsman would be effectively estopped from continuing his investigation; the granting of such power to a government ministry was criticized by almost all the Opposition M.L.A.'s who spoke on Bill 4.

The circumscribing of the Ombudsman's actions was also expressed in terms of time. Mr. Akerman doubted the adviseability of denying interference until all appeals had been exhausted since this could take months or even years. He also condemned the necessity of notifying the appropriate officials before opening active investigations, comparing the effectiveness of this provision with one by which the police had to notify burglars before proceeding to the scene of a crime.

The government's response to the comments and criticisms of Mr. Akerman and other members took the form of a lengthy definition of the role and function of the Ombudsman, and an assurance that all constructive remarks would be considered by the Select Committee on Law Amendments.

The Province of Quebec

The debates on the Public Protector Bill (Bill 13) took place on May 22 and October 22, 1977.⁷ The two main spokesmen against the Bill were Mr. Lesage, Leader of the Liberal Opposition, and Mr. Wagner, Justice Critic for the Liberal Party. Their remarks pertained chiefly to the need for an Ombudsman-like official at the time, and the restrictions placed upon him by the Legislation.

Mr. Lesage, in his comments at the conclusion of the debates, questioned the government's sense of priorities. He thought that a re-organization of the structures of administration, an amended system of controls on the bureaucracy, and a declaration of the rights of man were all more pressing matters than a Public Protector. Mr. Wagner suggested that if an institution to protect

the rights of citizens were to be set up at all, a committee would be more capable of dealing with the various types of problems than an individual.

Several restrictions imposed on the Public Protector by Bill 13 were pointed out in the debates. Section 22 was criticized for limiting him to a private investigation; some members felt that the glare of publicity would be a useful tool in the effecting of change within the administration. Section 25, under which the Protector would have to inform the government agency after he decided in favour of the complainant, was also criticized as being a waste of time and a needless enfeebling of the Protector.

Earlier Ombudsman legislation in Alberta and New Brunswick was cited to support the case for the Public Protector's right to investigate both complaints arising more than one year prior to their being brought to his attention, and matters where a right of appeal existed. Mr. Lesage stated that the preclusion of the Protector from these types of complaints represented "un certain manque de confiance dans le jugement de celui qui exercera la fonction".

Further restrictions on the scope of the Protector's jurisdiction were noted, among them his being forbidden to investigate acts or omissions of the Lieutenant-Governor-in-Council or quasi-judicial matters. Also considered was the difficulty in differentiating between "une fonction administrative et une fonction quasi-judiciaire". It was suggested that difficulties such as these should be taken to the Legislature immediately, rather than waiting

for the Annual Report. In this way the link between the Assembly and the Public Protector would be maintained with no feelings of competition.

The Province of Saskatchewan

The debates in Saskatchewan took place during March, 1972.⁸ The topics discussed included the need for an Ombudsman, actual handling of complaints, restriction of powers, and extent of jurisdiction.

A large percentage of the Opposition members agreed with the idea of an Ombudsman but could not see the necessity of such an institution in Saskatchewan at that time. Reference was made to the small population and excellent communications facilities in the province, and to the amount of time M.L.A.s spent in their constituencies (at that time, the House was in session for only three months out of the year). One member stated that if a citizen with a complaint received no satisfaction from any of the existing appeal procedures - his own M.L.A., other M.L.A.s, civil servants and cabinet ministers - then conditions in the province would indeed be intolerable.

The procedure for accepting and handling complaints was severely criticized in the Assembly. Some members commented on the method of bringing complaints to the Ombudsman's attention noting that there was no provision made for accepting grievances that were not written. Others objected to the specific permission given the government to be represented by counsel where none was given the complainants. Attention was also drawn to a requirement that had

no counterpart in other Ombudsman legislation: complainants had to be residents of the province before they could complain of provincial maladministration.

Most of the members' comments on Bill 9 dealt with the restrictions it placed on the Ombudsman. One member doubted the adviseability of permitting the Ombudsman to report or recommend but to take no direct action. A number of others were concerned that many responsible officials (specifically ministers and deputy ministers and those who report directly to them) were beyond the Ombudsman's purview. The section that came under the heaviest criticism, however, was that dealing with the Attorney General. Under Section 17 of the Act the Attorney General could forbid the Ombudsman to investigate any case that was considered to be against "public interest". The Attorney General could also decide who reported "directly" to ministers and deputies and was therefore unapproachable by the office. Every Opposition member who spoke on the Bill agreed that such direct involvement in Ombudsman affairs ought not to be allowed to a government ministry.

The extent of the Ombudsman's jurisdiction, as outlined in Bill 9, was considered by several members to be insufficient. The McRuer Report was quoted to support the case for including municipal jurisdiction, and Nova Scotia was cited as a Canadian province whose Ombudsman could delve into local affairs.

New Zealand

The debate concerning the original Ombudsman legislation in New Zealand took place in the summer of 1962. Further discussion regarding the Ombudsman's office occurred in the latter half of 1968

and in early 1975, at the time that Bills to amend the 1962 Act were introduced.⁹ Although New Zealand was the first country outside of Scandinavia to establish an Ombudsman, few members other than the Attorney General spoke at any length on the introductory Bill. What discussion there was centred around the necessity of the measure at all and the restrictions placed on the Ombudsman by the Bill.

Several members believed that there was no need for an Ombudsman in New Zealand, one of them commenting that "if 17 Cabinet Ministers could not control this alleged vast Public Service machine, how in heaven's name could one inquiry officer do so?" (330 N.Z.P.D. p. 1031). These members saw the Bill as an admission of lack of competence on the part of the government, and claimed that they personally saw no reason for M.P.s to be relieved of their duties as guardians of the public trust.

Further objections to the Bill concentrated on the limitations it would impose on the Ombudsman. His exclusion from the vaguely defined area of "government policy" was criticized; it was argued that the government could decide that any possible maladministration was a matter of "policy" and thereby effectively cut the Ombudsman out. The failure to extend his jurisdiction to include a number of areas of governmental activity was criticized. In particular, the placing of armed forces complaints beyond his jurisdiction would, some members felt, remove a likely source of administrative friction; Sweden was cited as a jurisdiction in which a special officer dealt with nothing but military-related complaints.

Before the debates closed there was some discussion of the costs of the Ombudsman operation and the political nature of an institution established by only a simple majority of the House, rather than one composed of Opposition as well as Government members.

During the discussion of the amendments in 1968 and 1975 the success of the office was acknowledged and the Ombudsman was commended for the job he had done. The proposed changes dealt with some of the criticisms mentioned in 1962 debates: by 1975 the Ombudsman's jurisdiction had been extended to include almost all agencies of both the central and local governments.

Great Britain

The day allotted for the second reading in the House of Commons of the Bill creating the Parliamentary Commissioner for Administration was October 18, 1966.¹⁰ Comments from Labour back-benchers and Tory and Liberal Opposition members indicated that the main areas of concern with the Bill were: first, the necessity of a Parliamentary Commissioner or Ombudsman at all; second, the restrictions placed on the Commissioner with respect to the handling of those complaints within his jurisdiction; and finally, the limited nature of the jurisdiction itself.

The necessity of a Commissioner was questioned by several members of the Conservative Opposition. They pointed out the differences between Scandinavia, where the Ombudsman was effective and necessary because of a relatively small population and insufficient means of questioning ministerial action, and England, where the

large population and the institution of question period in Parliament made the functioning of the Commissioner both difficult and unnecessary. It was their uniform assertion that the individual M.P. was perfectly capable of dealing with complaints from his constituents.

The Labour proponents of the Bill contended that the investigative powers of the Commissioner were greater than those of an M.P. working alone. To help ensure that the M.P.'s role in the handling of complaints did not become one of merely "passing the buck" to the Commissioner, a Grievance Committee was proposed. This body would see to it that the M.P. had exhausted all avenues of appeal before a complaint was handed over the Commissioner.

Further opposition to the Bill came from other Tories, Liberals, and Labour backbenchers. These members were not concerned that the Legislation went too far in supplanting the role of the M.P.; rather, they doubted that it went far enough. Their speeches drew attention to the restrictions placed on the functioning of the Parliamentary Commissioner's Office by the Bill. They noted that any minister could forbid the disclosure of information which would be "contrary to the public interest", and that the Commissioner could investigate maladministration but not "the exercise of discretionary powers...without maladministration" (the definition of which would rest not with the Commissioner but with the government). These provisions in the Bill were considered so to hamper any Commissioner that he or she would be unable to perform a worthwhile function.

Another cause for complaint with the Bill was the extent of jurisdiction given the Commissioner. This, too, was considered

restrictive: police, hospitals, nationalized industries, municipal officials, and personnel matters in the armed forces were all excluded from the Commissioner's purview. Several proposals were made during the course of the debates to broaden the ambit of the Commissioner to include these areas, but none of these were adopted. At the end of the day when the Bill passed second reading Parliament was still divided on its merits, and even the Government had conceded that it was only a faltering step on a long road.

Australia

Debates on the institution of the office of the Ombudsman for Australia's federal government took place in the summer of 1975. Prior to that time, all of the States had created such an office, the debates in South Australia, Victoria and New South Wales having taken place in the autumn of 1972, April of 1973, and the latter half of 1974 respectively.¹¹ Members in all of these Legislatures were in general agreement on the value of an Ombudsman. What criticisms a small minority did have dealt primarily with duplication of function, tenure, restrictions, and size.

The need for an Ombudsman was questioned by one particular member in the South Australia Legislature. He drew attention to a possible duplication of the Auditor General's function, and contended that the almost unanimous support for the Bill stemmed from lazy M.P.s who desired a lighter complaint load from constituents. His proposal, by which all complaints would go to the Members before being forwarded to the Ombudsman, as was the case in Great Britain,

was rejected by the government as needlessly time-consuming.

The Ombudsman's tenure in office was a subject of comment in several states. Since the only provision in the South Australia Bill was that he retire at age sixty-five and in the Victoria Bill at seventy-two, the appointment was, in effect, for life. Some members indicated it to be their view that this gave the Ombudsman too much independence, since after the passage of some years he would no longer be responsible to the same Legislature that had originally appointed him. In New South Wales, where the term is seven years, a member suggested a shorter term with indefinite re-appointments; in this way the Ombudsman could retain some degree of independence, but if matters came to a head with the Legislature he could be dismissed. In the event of such a confrontation, the member also proposed that an independent arbitrator be appointed to ensure that an objective viewpoint was maintained.

Several members in Victoria objected to the Ombudsman's Annual Report being made to the Executive rather than the Legislature; they argued that, far from being only a formality, this manner of reporting could easily restrict and limit the Ombudsman, and recommended instead that he be allowed to report directly to the Legislature proper.

Further limitations were discussed with reference to the federal Ombudsman. A member of the Australian Parliament expressed his doubts about the advisability of exempting Ministers from investigation. He differentiated between Cabinet policy making, which in his view should be kept secret, and decisions taken by a Minister

on his own initiative, which according to his view should come within the Ombudsman's jurisdiction.

Fears were expressed throughout the Australian jurisdictions that the size of the office might become problematical. Mention was made of the salaries that would be paid, and one member from South Australia referred to the Ombudsman as an "empire-building job." For the most part, however, members in legislative assemblies in Australia seemed assured that the Ombudsman's staff would be limited and his profile low, that the parameters of his jurisdiction were sufficiently broad, that his independence was secured, and that the whole concept was worthwhile and should be introduced as soon as possible.

INDEX OF LEGISLATIVE DEBATES ON THE
OMBUDSMAN EXAMINED IN THIS CHAPTER

1. Ontario: Ontario Hansard

11 March, 1975	p. 4 (Throne Speech)
22 May, 1975	pp. 2029-30, 2032
27 May, 1975	pp. 2214-5
10 June, 1975	pp. 2811-24, 2829-53
12 June, 1975	pp. 2876-2902, 2909-26
17 June, 1975	pp. 2077-116
19 June, 1975	pp. 30140-58, 3163-83

2. Alberta: Alberta Hansard

30 May, 1972	pp. 57-9 - 57-23 (<u>Ombudsman Amendment Act, 1972</u>)
3 April, 1974	pp. 942-4 (Selection of Second Ombudsman)
4 April, 1974	pp. 996-1007 (<u>Act to Amend the Ombudsman Act, 1974</u>)
8 April, 1974	pp. 1064-5 (Selection of Second Ombudsman)
7 May, 1974	pp. 1819-22 (Appropriations for Second Ombudsman)

3. Manitoba: Legislative Assembly of Manitoba

28 August, 1969	pp. 274-5
5 September, 1969	pp. 471-9
8 September, 1969	pp. 529-32
9 September, 1969	pp. 599-601
5 May, 1975	pp. 2055-6 (Annual Report)
7 May, 1975	pp. 2179

4. New Brunswick: Synoptic Report of the Proceedings of the
Legislative Assembly of New Brunswick

10 May, 1967	pp. 838-45
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5. Newfoundland: Newfoundland Parliamentary Debates

25 February, 1975	pp. 52-5 (<u>An Act to Amend The Parliamentary Commissioner (Ombudsman) Act, 1975</u>)
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6. Nova Scotia: Assembly Debates

17 December, 1970 pp. 253-62

7. Quebec: Debats de L'Assemblee Legislative

22 Mai, 1968 pp. 39-55

22 Octobre, 1968 pp. 3503-13

8. Saskatchewan:

8 March, 1972 pp. 422-31

22 March, 1972 pp. 1057-68

28 March, 1972 pp. 1295-1300

29 March, 1972 pp. 1305-13

30 March, 1972 pp. 1326-39

9. New Zealand: New Zealand Parliamentary Debates

14 June, 1962 pp. 117-21

25 July, 1962 pp. 1010-35

26 July, 1962 pp. 1061-75

30 August, 1962 pp. 1757-8

5 September, 1962 p. 1859

6 September, 1962 p. 1884

14 August, 1968 pp. 1308-12 (Ombudsman
Amendment Bill, 1968)

17 December, 1968 pp. 3991-3

18 December, 1968 pp. 4003-4

8 November, 1974 pp. 5735-8 (New Ombudsman
Bill, 1975)

15 April, 1975 pp. 532-5

17 April, 1975 pp. 649-67

20 June, 1975 p. 2334

24 June, 1975 pp. 2377-8

10. Great Britain: House of Commons Debates

10 November, 1965	Vol. 720, Cols. 262-9 (Conservative Party's Reply to Queen's Speech)
18 October, 1966	Vol. 734, Cols. 42-174

11. Australia: House of Representatives

6 March, 1975	pp. 1186-8
6 June, 1975	pp. 3362-71
5 June, 1975	pp. 3478-85
30 August, 1975	pp. 282-9

Senate:

26 August, 1975	pp. 219-22
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New South Wales: Parliamentary Debates

29 August, 1974	Speech by Attorney General Maddison
19 September, 1974	pp. 1250-72
24 September, 1974	pp. 1333-55

South Australia: House of Assembly

28 September, 1972	pp. 1696-9
12 October, 1972	pp. 2059-63
17 October, 1972	pp. 2124-37
19 October, 1972	pp. 2256-7
24 October, 1972	pp. 2273-6
25 October, 1972	pp. 2420-4
26 October, 1972	pp. 2478-9
31 October, 1972	pp. 2521-3
1 November, 1972	pp. 2606-7
2 November, 1972	pp. 2672-3
7 November, 1972	pp. 2741-2

Victoria: House of Assembly

20 March, 1973	pp. 4198-202
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Victoria: House of Assembly (continued)

4 April, 1973	pp. 4928-42 and pp. 4974-82
5 April, 1973	pp. 5008-9
11 April, 1973	pp. 5275-83

VI THE LITERATURE ON THE OMBUDSMAN

CHAPTER VI

THE LITERATURE ON THE OMBUDSMAN

The literature concerning the institution of the Ombudsman uniformly recognizes that it has been created to combat a problem that exists wherever government exists. Every author, dealing with Ombudsmen in such diverse jurisdictions as Scandinavia, New Zealand, Great Britain, Israel, Australia, the United States and Canada, views the exact role of the office and the specifications of an optimum operation in a slightly different light. Yet among all writers there is a consensus regarding the nature of the basic problem - mistreatment of the individual by the machinery of the government's administrative process - and a remedy - an independent and impartial official with investigative powers appointed by and responsible to the legislature.

Continuing with this overview of the literature on the topic of the Ombudsman institution, the similarities do not end with the broad agreement concerning the ill to be countered. The numerous definitions of an Ombudsman-type official also reflect a striking sameness which, although they may stem from a common root, is unusual nonetheless when one considers the widely varying contexts in terms of governmental and administrative procedure in which the office has been applied and analyzed. But while none of the characteristics of the Ombudsman emerging from a consideration of the many writers on the topic are mutually exclusive, that is to say, there are no outright contradictions concerning the role of the Ombudsman, differences in emphasis are certainly evident. Several authors stress his independence and impartiality. Others

concentrate on his access to government files and documents while still others emphasize his inability to take direct action. One of the most frequent references is to the Ombudsman's not being a powerful force for broad social change; for the most part he handles individual grievances and works within the system to supplement existing institutions. His involvement in a major way with far-reaching policy revisions is unusual and infrequent.

Much of the material written on the Ombudsman is aimed at improving the office. Having examined the work of the principal writers in the field it is possible to discern both their views on the major shortcomings of existing institutions and, by focussing on their recurring recommendations, their conclusions regarding the office's improvement. By way of introduction, the following areas appear to be considered of principal importance.

In the first place, staff composition is considered significant by a number of writers. A small, personal office profile is preferred by some; most, however, maintain that the efficiency of the office is a more important quality and where it is a question of either one or the other, the former must be sacrificed in the interests of the latter. It is also generally agreed that legal knowledge is an essential commodity on staff, particularly in order to resolve complex questions of jurisdiction.

By far the most common recommendations concern publicity and jurisdiction. Nearly all of those writing about the Ombudsman institution are of the opinion that the Ombudsman concept is not well-enough known or understood. It is suggested that extensive

public relations work is needed to cut down on non-jurisdictional complaints and build Ombudsman-awareness. With reference to jurisdiction, almost every author argues that the exclusion of certain areas of government involvement at whatever level takes away from the over-all effectiveness of the Ombudsman. The close interaction between federal, provincial/state and municipal officials necessitates an extension of jurisdiction to cover all three possible sources of maladministration.

Several authors stress the desirability of maintaining good relations with the public service and the legislature. More frequent reports to both bodies (particularly the latter) are proposed as one method of linking the Ombudsman more closely with those who can most affect his performance.

There are references to a solution to the less than satisfactory relationship between the citizen and the bureaucracy that go beyond the idea of an Ombudsman. This broader reform, be it administrative, legal or judicial, is not dealt with other than theoretically, however, and it is generally recognized to be much more expensive and difficult to institute than the office of the Ombudsman. These writers, then, see the Ombudsman either as an interim measure or as one aspect in a comprehensive and continuing reform plan.

In this study of the literature on the office of the Ombudsman, works by some of the most influential writers in the field are examined. These deal with the Ombudsman wherever such an office has been created. The purpose of this analysis is to

compare the views of these authorities on the role of the Ombudsman and the way in which he can best fulfill it. By focussing on points of comparison, a cross-section of opinion emerges on some topics, all of which it is felt can be of assistance in arriving at recommendations for procedures to be instituted in the Ontario office.

The Character and Role of the Ombudsman

Professor Stanley Anderson, one of North America's leading authorities on the Ombudsman, considers that the "essential characteristics" of the post require that the individual filling it be:

- "1. independent,
2. impartial,
3. expert in government,
4. universally accessible, and,
5. empowered only to recommend and to publicize".¹

Professor Anderson repeatedly warns that the institution is no panacea for the cure of all government ills. The Ombudsman, he insists, can only "encourage continuing improvement in a basically sound and honest administration".² The "contributions of the Ombudsman" are summed up as being "to 1. resolve grievances, 2. improve administration, and 3. aid legislative oversight of administration".³

This conception of the Ombudsman is supported and amplified by other writers. Professor Donald Rowat, one of the first and principal advocates of the institution outside of Scandinavia, empha-

sizes three aspects of the Ombudsman's role:

- "1. that he is an independent, not partisan officer of the Assembly;
2. that he deals with specific complaints from the public against administrative injustice, and,
3. that he can investigate, recommend, publicize, but he cannot take any direct action".⁴

Looking to a third view, Professor Walter Gellhorn, a world-renowned authority on public administration, goes further in his description of the common attributes of Ombudsmen:

- "1. All are instruments of the legislature but function independently of it, with no links to the executive branch and with only general answerability to the legislature itself.
2. All have practically unlimited access to official papers bearing upon matters under investigation, so that they can themselves review what prompted administrative judgment.
3. All can express ex officio experts' opinions about almost anything that governors do and that the governed do not like.
4. All take great pains to explain their conclusions, so that both administrators and complaining citizens will understand the results reached".⁵

As may be easily seen, and as has already been indicated, these characterizations of the role and function of an Ombudsman are notable for their similarities rather than their differences.

When one reviews some of the more general definitions of the Ombudsman's function, one is struck by the almost invariable emphasis upon the limitations placed on his sphere of operation.

Thus, Professor Bernard Frank, one of the foremost authorities on recent "Ombudsmanship", underlines the complementary aspect of the Ombudsman's function in his assertion:

"The true role of the Ombudsman is merely to supplement the existing institutions - courts, legislatures, executives, administrative courts and administrative agencies".⁶

And Professor Gellhorn, although fully versed in the benefits of an Ombudsman, acknowledges that the office has its limitations as well:

"The conclusion can be stated that administrative critics are on sounder ground when dealing with omissions of specific duties owed to identifiable persons or groups than when building new government policies...issues that concern the public ...may perhaps best be left to political controls instead of to the judgment of a jack of all trades".⁷

On the other hand, one wonders whether some others might not have placed these restrictions on somewhat too high a plane in their assessments of the Ombudsman's role; either that, or perhaps their comments relate solely to the particular office under discussion. Reference in this regard may be made to the conclusions of Messrs. Roy Gregory and Peter Hutchesson, writing on the British Parliamentary Commissioner for Administration (Ombudsman), who warn that his function is not to try "in some way to 'take on' the Administration" on behalf of complainants:

"Had [the Parliamentary Commissioner] incurred the hostility of the civil service so that dealings between himself and government took on an adversarial character... there is not much doubt as to which side would have come off worse. The Commissioner has too few weapons at his disposal to play the gladiator".⁸

Going even further, Professor H.W.R. Wade, dealing with the British Parliamentary Commissioner for Administration from a lawyer's point of view, draws the conclusion that the limitations imposed on the P.C.A. are for the best:

"Restrictiveness may have something to do with the complaint that the Commissioner's work so far is 'small potatoes'. I have no sympathy with that comment, since small potatoes are what an Ombudsman is for".⁹

There are obviously those who would take issue with this observation if meant to apply to jurisdictions other than that immediately under study by Professor Wade; Mr. Maloney, for instance, has said on more than one occasion that such a "small potatoes" operation is no more than a front, a facade, of no use to its constituents and a needless and wasteful expense.

Staff Composition

A frequent topic of discussion regarding the actual operation of the Ombudsman's office is the size and make-up of the staff complement. Professor Lance Tibbles, who has written at some length on the Ombudsman in the United States, asserts that a large office in a centrally located building projects the wrong image for an Ombudsman:

"A downtown office would not attract those citizens who would most benefit from the agency - the non-white and poverty communities...I would favour instead the concept of neighbourhood offices as well as neighbourhood aides to act as intermediaries between the office and the community".¹⁰

On the other hand, such a comment presumes that the Ombudsman's

principal constituency is to be found in the class of persons economically less advantaged and ignores the fact that an Ombudsman is not an extension of a Legal Aid plan. During the period of his tenure Mr. Maloney consistently deprecated this approach in terms of making available the services of the office, and it is of some interest that as the experience of the office grew, more and more complaints were received from the upper socio-economic levels of society. One reason for this is not difficult to suggest; while supposedly better able to look after his own, the rich man, where a confrontation arises, is, like the poor man, a lone voice against the bureaucracy, and entitled to look to the Ombudsman for assistance.

Professor Karl Friedmann of Alberta, in contrast with Professor Tibbles, is not as concerned about the image presented by the office as he is about its efficiency. Well aware of the difficulty in dealing expeditiously with a large number of grievances, Professor Friedmann fears the establishment of a large Ombudsman's office much less than an enervating complaint backlog:

"To enable an Ombudsman to operate effectively, the government should not, for shortsighted reasons of economy, understaff his office".¹¹

Professor Rowat, too, believes that the idea of the "personal touch" is less important than the people's belief in the office's impartiality and competence:

"Some scholars argue that a functional division or decentralization of the in-

stitution would cause it to lose its attractive personal touch, which they consider a key to its success. Others, however, including myself, contend that the importance of the personal touch has been exaggerated: far more important is the citizen's faith in the institution's independence..."¹²

There is general agreement among the authors that staff members should possess some specialized knowledge. Professor Tibbles' views on staff qualifications are derived from the experience of other Ombudsmen:

"Although the Ombudsman would not be expected to render legal services... experience points to a need for at least one law-trained staff member. In addition, some staff expertise in public administration seems to be desirable".¹³

Professor Wade concerns himself more specifically with the staff's understanding of the law. He criticizes the lack of legal training on the staff of the British Parliamentary Commissioner; this had produced what he calls a "public service mentality" in the office, rather than a legal or judicial one. Since "there are cases where legal judgment is called for to determine jurisdiction:, there should, he feels, be lawyers on staff."¹⁴ This view is recognized even by Messrs. Gregory and Hutchesson, who are generally far less critical of the Parliamentary Commissioner institution. In their book, The Parliamentary Ombudsman, they refer several times to "the total lack of any legal expertise in the Office".¹⁵

The Law and the Ombudsman

Professor Geoffrey Sawyer, another early proponent of the office of the Ombudsman, would further link the law to the office:

"I do not suggest...that the very wide discretion which has been granted to [the Ombudsman] should ever become hardened into a set of specific rules or circumscribed discretions...but one can propose with advantage...for the theoretical study of legal evolution, that lawyers ought to ponder the Ombudsman's case reports; lawyers should rearrange them in a manner closer to the grammar of the law, and analyze their conceptual assumptions".¹⁶

In this way, Sawyer argues, a "jurisprudence of the Ombudsman" could be established. Professor Wade is in agreement concerning the importance of the Ombudsman concept to lawyers, because "it takes up the business of controlling administration at the point where the law leaves off".¹⁷

Unfortunately Professor Sawyer never details the distinction between a "legally grammatical" rearrangement and "conceptual analysis of assumptions" on the one hand and "a hardened set of specific rules" and "circumscribed discretions" on the other. He has, accordingly, been criticized by Professor Bernard Schwartz for limiting the scope of the office. Professor Schwartz argues that by "consciously creating another system based on precedent and previous analysis", Professor Sawyer has negated both the "cheapness and flexibility" and the "objectivity and reliability" that constituted his (Sawyer's) earlier definition¹⁸ of the Ombudsman.¹⁹

Relations with the Administration and the Legislature

A number of authors recommend that the Ombudsman establish close and amicable links with the administration and the legislature. Professor Larry Hill, who has written extensively on the Ombudsman, notes the importance of the administrators to the New Zealand office. He recognizes at the same time that the

stature or "rank" of the Ombudsman as perceived by the public servants is a major factor in determining the amount of cooperation the civil service is likely to afford him; this despite his assertions that values or "norms" are shared by Ombudsmen and administrators alike.²⁰

Professor Friedmann also advocates the maintenance of good relations with the administration, since "the usefulness of the Ombudsman...depends largely upon the impact which [he] has on the public service".²¹ Indeed, a co-operative administrative sector is viewed as considerably broadening the powers of the office:

"With generally positive attitudes the service will normally be open to suggestions and influence by the Ombudsman...the Ombudsman has thus a significant potential for improving public administration".²²

All traditional Ombudsmen are responsible to the legislative body that appointed them. This responsibility is underlined and reinforced by the Annual Report, in which the Ombudsman describes to the Legislature the operation of his office during the preceding year. Because he feels that at present the Ombudsman is too far removed from the Legislature, Professor Mikael Hidén of Finland proposes that the Finnish Ombudsman "be empowered to report to Parliament in individual cases rather than only in his Annual Report".²³ By linking the Parliament and the Ombudsman through more frequent reports, Professor Hidén hopes to broaden the legislative impact of the office.

Professor Frank Stacey, a leading authority on the British Parliamentary Commissioner for Administration, also argues in favour of more frequent reports to the Legislature. In his book The British Ombudsman, published in 1971, he notes that only three special reports

were published by the PCA in four years, and that there is a danger that the already-constricted nature of the office's operation will become even further circumscribed.²⁴

Public Relations

One of the most commonly voiced recommendations concerns publicity. The relative newness of the Ombudsman concept outside Scandinavia means that the office is not yet widely known nor completely understood. Virtually all authors on the subject urge that more and better public relations be employed by Ombudsmen all over the world. Peter Elman, writing on the Commissioner for Complaints from the Public (Ombudsman) in Israel, concludes:

"The Commissioner should go further in exploiting his fund of public confidence, in particular by the publication of more pertinent, more consistent, and more detailed data so as to enable the areas of difficulty and of resistance to be identified".²⁵

Professor Frank criticizes the Nebraska Ombudsman for not issuing releases on cases and for not putting case histories in his Annual Reports, citing this as one reason why "most Nebraskans do not know of this Office or have a clear idea of its function".²⁶ Professor Frank comes to this conclusion despite that Ombudsman's "great efforts to bring the office to the attention of the public"²⁷ in the form of speeches, interviews, and the use of radio, television and brochures -- clearly Professor Frank regards the publication of case summaries as vital public relations.

Regarding publicity, the nature of the Ombudsman's clientele is a matter of significance for Professor Friedmann:

"The higher up people are on the occupational or income scale, the more likely they are to know of the existence of the Ombudsman...Poor and less-educated people have...more cause for potential and actual friction with administrators... [therefore] we would have to conclude that those who need the Ombudsman most know least about him..."²⁸

To rectify this situation Professor Friedmann recommends "that the Ombudsman (or politicians and political parties) consider a well-armed publicity campaign a proper part of his office".²⁹

Professor Alan Wyner similarly advocates the concept that extensive publicity is necessary to reach the less advantaged segments of society. He suggests that "the Ombudsman should strive to penetrate the community action agencies and reach individuals who are in daily contact with poor".³⁰ Professor Wyner also makes the point that office statistics play a role in publicity efforts. A comparison of case load and population distribution figures, for example, should stimulate a greater effort at publicity in the under-represented areas, and, if time is a problem, to provide less publicity in those areas over-represented.³¹

Jurisdiction

Comments regarding the jurisdiction enjoyed by various Ombudsmen are as critical as those involving publicity. Mr. Elman fears that "the absence of 'coercive' power does indeed derogate from the overall effect which the Commissioner's investigations could have". His proposals to remedy this state of affairs include the "enlargement of [the Ombudsman's] effective powers" so that he has jurisdiction over, not merely a select group of government concerns, but "all spheres of public activity in which citizens

are directly concerned".³² Mr. Elman also suggests that the Ombudsman be permitted to assume a role beyond that of an investigative nature:

"The example of Sweden, Denmark and Finland might be followed in empowering the Commissioner to initiate or direct, where appropriate, criminal prosecution or disciplinary proceedings".³³

The jurisdiction of Scandinavian Ombudsmen over the judiciary is also cited as a precedent by Professor Stacey. His particular interest lies in the establishment of an Ombudsman for the courts. Having drawn attention to several instances where such a jurisdiction would have been of use, he notes that "British judges are, in practice, remarkably immune from criticism".³⁴

Another critic of the British P.C.A.'s jurisdiction is Professor William Gwyn. He sees the source of the problem in the Commissioner's inability to initiate complaints; under the existing legislation, no investigation can be opened until the matter has been placed in the P.C.A.'s hands by an M.P. If the Commissioner were granted the authority to initiate complaints, Professor Gwyn feels that the office could do a great deal on its own motion to alleviate the problems of the poor and less-educated. As matters stand, however, "the benefits of an Ombudsman reached only on the initiative of a complainant are bound to be enjoyed disproportionately by the affluent and well-educated".³⁵

One aspect of the institution of the British Parliamentary Commissioner is viewed by Professor Gwyn as a very positive step in the evolution of the Ombudsman concept. This is the Select Commit-

tee on the P.C.A. The Committee advises the government on the Commissioner's jurisdiction and counsels the P.C.A. himself on the interpretation of his office and powers. Its involvement does not stop there, however:

"It follows through on work of the P.C.A. by questioning senior officials to discover whether proper remedies have been provided for complainants suffering from maladministration occurring within departments, and whether procedural deficiencies revealed by the Commissioner have been corrected... This important British contribution on the development of the Ombudsman...might be included in other systems."³⁶

The extended jurisdiction theme is reiterated by Professor Hiden who thinks the Finnish Ombudsman's jurisdiction, already broad, should be extended:

"Should he not have clear jurisdiction over private universities that receive aid from the state? Similarly, it may be desirable to extend his jurisdiction to commercial enterprises owned and run by the government. Another possible extension of...jurisdiction would be to include practicing attorneys".³⁷

These provisions would give the Ombudsman jurisdiction over virtually all spheres of government activity, though Professor Hiden acknowledges that such a move would "require thorough additional study".³⁸

Both Professor Gellhorn and Professor Wyner make a case for "independent, local Ombudsmen". Professor Gellhorn warns that because "most people are ignorant of the services available to them within the municipal context...local Ombudsmen might find themselves importuned to be all-purpose handymen".³⁹ Professor Wyner's concern for the poor leads him to suggest an extension of the Nebraska

Ombudsman's jurisdiction to include local authorities, since "poor-related" problems such as "welfare payments, rules and procedures" are often administered at the local level.⁴⁰

Other authors, notably Professors Frank and Tibbles, are also in favour of municipalities being within the jurisdiction of Ombudsmen. Professor Frank sees local jurisdiction as a function of the state's powers:

"Either a state should give its Ombudsman jurisdiction over both local and state agencies or a state should have statutes permitting local government to establish a local Ombudsman under...a state statute".⁴¹

Professor Tibbles further broadens this point of view; the establishment of connective links between the Ombudsman and all levels of government is considered:

"If a decision is made to establish [an Ombudsman] at one level, the maintenance of branch offices extending to both higher and lower levels of government must be included".⁴²

Related Reform Proposals

Several authors feel that the establishment of an Ombudsman is only a partial solution, and that what is ultimately needed is reform on a much broader scale. Professor Stacey recommends that an extended system of tribunals, as advocated in the Whyatt Report but not acted upon by the Wilson government, be adopted in Britain:

"There remains a need for an administrative court, comparable to the French Conseil d'Etat, which would...review the legality of administrative acts, and would have jurisdiction in public contracts and in reparation of administrative fault".⁴³

In America, a predominant concern is in the area of the institution of the Ombudsman as it relates to prison reform. Professor Tibbles discusses American prison-Ombudsman schemes in the light of the National Council on Crime and Delinquency's Model Act for the Protection of Prisoners' Rights, Section 5 of which establishes "an autonomous Ombudsman Agency" to provide inmates with "a simpler procedure for complaint than is currently available by legal action". Before concluding his case for a prison-Ombudsman system, however, Professor Tibbles advises that:

"Thought be given to establishing or improving internal grievance channels before the creation of a prison Ombudsman or any other type of external review mechanism".⁴⁴

Professor Gellhorn also feels strongly about the condition of those in prison:

"Nowhere is the need for external examination of grievances greater than in America's prisons, jails and other institutions of detention".⁴⁵

He sees the answer, however, not in a specialized grievance-handler like a prison Ombudsman but in a broadly-based state office. To support this view, Scandinavian Ombudsmen are cited as having "successfully reconciled disciplinary demands and inmate's interests".⁴⁶ The New Zealand Ombudsman is against a broad program of this kind. Unlike the advocates of prison reform, Sir Guy Powles prefers to take "a series of practical and ad hoc steps"⁴⁷ that will not involve massive expenditures of money or time.

This comparison of the work of major writers on the Ombudsman, highlighting some of the similarities in their views as

to his role and noting some of their recommendations for the improvement of the office is of value to an operation that is still, in many respects, in its formative stages. Further innovations will not automatically follow these suggestions; however, the conclusions and proposals of those who have specialized in this field of study are of substantial benefit in pointing out areas of potential strength as well as those of possible weakness.

FOOTNOTES - CHAPTER VI

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VII OMBUDSMAN OFFICES IN OTHER
JURISDICTIONS

OMBUDSMAN OFFICES IN OTHER JURISDICTIONS

A multitude of complaint-handling mechanisms may be found in jurisdictions throughout the world, some fifty of which qualify as "Ombudsman" systems by comparison with the International Bar Association and American Bar Association Resolutions. These offices are as varied as the jurisdictions in which they operate. Each, presumably, was designed to provide a maximum level of service in the context in which it was created. Many have been altered by legislative amendment as their function has evolved since the date of their introduction. All were felt worthy of study with a view to arriving at recommendations for possible improvement in the Ontario plan.

Included in this Chapter are brief analyses of a number of Ombudsman offices in jurisdictions other than Ontario. It should be stressed that no attempt was made to be exhaustive - indeed, there are many important offices to which reference has not been made - rather, an attempt was made to provide a rough cross-section of the many different offices to be found around the world. Some of these offices we visited and observed in operation on a first-hand basis; others we only came to know through correspondence, perusing Annual Reports, and in some instances through discussions with the respective Ombudsmen on the occasion of the 1976 International Ombudsmen Conference. Importantly, as mentioned in the Preface, some of the detail contained in the memoranda is certainly dated as it has been some time since many of our visits took place. In any event, these details are of less importance than the broad

distinctions in terms of conception and organization which remain largely unaltered.

What are these broad distinctions? On an overview of the jurisdictions discussed a number of these become immediately apparent:

- ÷ How is the Ombudsman placed in office? - by appointment? - by election? - does the Legislative Assembly participate in the process?
- ÷ What control is the Ombudsman given over the employment and discharge of his staff? - are the staff subject to the legislation governing the terms and conditions of the employment of civil servants?
- ÷ What matters are within the Ombudsman's jurisdiction? - how are the agencies of government whose actions are subject to the Ombudsman's jurisdiction defined? - does the Ombudsman have jurisdiction over local or municipal administration?
- ÷ How do complaints come to the Ombudsman? - must they be referred by a member of the Legislative Assembly? - is there a requirement that complaints be signed? - will a complaint be accepted over the telephone?
- ÷ What is the position of the Ombudsman in the event there is an outstanding right of appeal or other remedy available to a complainant? - does the Ombudsman have a discretion to entertain the complaint notwithstanding any right of appeal or other remedy?
- ÷ Does the Ombudsman have the discretion to release reports on investigations other than in the form of an annual report?

- ÷ Does the Ombudsman have the power to initiate investigations and/or inspections of his own motion?
- ÷ What happens to the Ombudsman's reports? - are they submitted to a committee of the legislature? - if so, in what manner does that committee function?
- ÷ How is the office organized? - are branch offices utilized in addition to the main office?

These questions suggest some of the distinctions which one encounters upon consideration of the Ombudsman offices in other jurisdictions. In many instances, systems differ substantially from that in Ontario. The rationale for these characteristics and the success of their implementation are sometimes peculiar to the constituency in which they are found. On other occasions one might query their applicability in the Ontario context and in a number of instances they form the basis for certain of the recommendations contained in the following Chapter.

AUSTRALIA - STATE OF NEW SOUTH WALES

Name of Office	The Ombudsman
Relevant Legislation	Ombudsman Act, 1974 as amended October 13, 1976
Present Incumbent	Kenneth Smithers, C.B.E. (appointed April 2, 1975). Mr. Smithers was formerly a practicing solicitor.
Term of Office	7 years
Address of Office	14th Floor 175 Pitt Street Sydney 2000 Australia
Population of Jurisdiction	4,696,000 (Sydney - 2,850,630)
Staff Complement	13 exclusive of the Ombudsman, including a Deputy Ombudsman, an executive officer, a senior investigator, 3 investigators, an interviewer, an administrator, 4 stenographers and a messenger
Average Number of Complaints per Annum	Approximately 2,400

Descriptive Analysis

Appointment of the Ombudsman

Section 6 (1) of the Ombudsman Act, 1974 provides that:

"The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment."

The "Minister" referred to in this section is the Premier of the State of New South Wales. In fact a subcommittee of the cabinet oversaw the selection process which preceded the recommendation on the part of the Premier going forward to the Governor in the case of the appointment of Mr. Smithers. While it may be argued that this manner of appointment renders the Ombudsman open to the criticism that he is the servant of the Government as opposed to the Parliament, this may be countered by the fact that his Reports are put before the Houses of Parliament and he may be removed from office by the Governor upon the address of both Houses of Parliament; therefore, he is answerable to Parliament rather than to the Government. The term of office is "as specified in the instrument of the Ombudsman's appointment", although it may not exceed a period of seven years, as is the case with Mr. Smithers. The Ombudsman is eligible for re-appointment at the expiry of his term of office but becomes ineligible to either be appointed or to continue as Ombudsman upon attaining sixty-five years of age. A person is similarly disqualified from serving as Ombudsman in the event he is elected as a Member of Parliament or engages in any employment for compensation outside the duties of his office.

Although the provisions of the Public Service Act, 1902 do not apply to the Ombudsman, insofar as the Ombudsman's staff is concerned section 32 (1) of the Ombudsman Act, 1974 provides:

"The Governor may appoint and employ, under and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to exercise and perform his powers, authorities, duties and functions."

The effect of this provision is that the staff of the Ombudsman's office are civil servants and subject to the Public Service Commission, as are all other government employees. The Commission incidentally sets salary ranges for specific job classifications. This is in addition to the fact that requests for additional personnel must be cleared through the Public Service Commission and the Governor, and regardless of practice there is not even the usual legislative provision that such appointments are to be "on the recommendation of the Ombudsman."

The Ombudsman's Function and Jurisdiction

The Ombudsman's jurisdiction is set out in sections 12 and 13 of the Ombudsman Act, 1974 in combination with the Interpretation section of that Act which in essence provide that the Ombudsman is empowered to investigate the conduct of any public authority in order to determine if action or inaction relating to a matter of administration on the part of that authority may be wrong. The term "wrong" is defined to include:

- (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;

- (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

A Schedule to the Act sets out certain public authorities whose activities are excluded from the Ombudsman's jurisdiction, (amendment of which may be made by proclamation of the Governor) and among which are the following:

- (i) the conduct of a Minister of the Crown;
- (ii) the conduct of Parliament as such;
- (iii) the conduct of Judges or the courts or indeed any person or body before whom witnesses may be compelled to appear and give evidence;
- (iv) the conduct of a person or public authority acting as a legal adviser to the Crown or a public authority;
- (v) the conduct of a public authority in connection with employer-employee relationships; and
- (vi) the conduct of a member of the Police Force acting as a Constable.

The conduct of local government authorities was originally not included within the Ombudsman's purview. This qualification was severely criticized by Mr. R.J. Muloch, The Shadow Attorney General in the New South Wales Legislative Assembly. By an amendment to the Act assented to October 31, 1976 the Ombudsman's jurisdiction was enlarged to include local government bodies from and after December 1, 1976.

The Ombudsman in New South Wales does not have the power, as is the case in some other jurisdictions, Denmark being one,

to direct that criminal or disciplinary proceedings be instituted against any public servant. His power in cases wherein he determines that the conduct complained of was wrong is restricted to making a report containing his recommendation with a view to rectifying the error in administration. In certain instances where he is not satisfied that appropriate steps have been taken to implement his recommendation he may make a subsequent report to the Premier for presentation to Parliament.

Procedure

Experience has shown that the majority of complaints are received in the office in New South Wales in the form of letters from complainants. The Act does allow that a complainant can consent to have his complaint brought to the Ombudsman's attention by a Member of Parliament. The Ombudsman may in his discretion refuse to conduct an investigation into a complaint, and in particular may do so where he is of the opinion that in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress. The Ombudsman is also able to initiate complaints on his own motion although to this date this power has not been utilized to any significant extent.

When a complaint is received in the office a file is immediately opened on it and it is coded. It is initially reviewed by the Ombudsman and his executive officer at which time a determination is made on the question of jurisdiction. In the event that it is determined to be within the Ombudsman's jurisdiction it is then assigned for investigation. A degree of specialization has evolved in that certain types of complaints are almost invariably assigned to specific investigators. The first step in the investigation process usually involves a request to the government body concerned for a report on the substance of the allegation and the government agency is given one month

within which to reply. Upon receipt of their reply the matter is taken up with the complainant once again and if the facts contained in the reply do not coincide with those related by the complainant then the Ombudsman or a member of his staff may attend personally at the offices of the public authority concerned to conduct his own further investigation.

At the conclusion of the investigation the investigator will make a recommendation with respect to the appropriate disposition of the case. This recommendation is considered in a meeting with the investigator, the executive officer and the Ombudsman in attendance at which time a decision as to disposition is arrived at. The complainant is notified of the outcome of his complaint and supplied with a copy of the Ombudsman's final report in the matter.

General Observations

Comprising a significant proportion of the population of New South Wales are immigrant groups, particularly those from European countries. This situation has not dictated any peculiar response in the organization of the Ombudsman's office to this date in terms of the employment of those having a fluency in languages other than English although on occasion the need has arisen to utilize the services of the government translation service. There is neither a branch office nor plans for such an office outside of the City of Sydney and there has not been any systematic series of hearings undertaken around the State for the purpose of receiving complaints from those residing outside Sydney; rather the emphasis in New South Wales is upon receiving complaints by correspondence which conforms to the requirement set out in section 12(4) of the Act requiring that a complaint be in writing. On the other hand, there is a specific employee in the Ombudsman's office whose duty it is to handle requests

by those seeking assistance in formulating a complaint, be it by way of a personal attendance at the office or in the form of a telephone call, and who will sit down with a potential complainant to assist him or her in drafting a formal complaint.

One unusual feature of the Ombudsman Act, 1974 is that Section 37 makes it an offence for any person to directly or indirectly represent that he is the Ombudsman or in any connected with the Ombudsman's office where he has not been so appointed.

AUSTRALIA - STATE OF QUEENSLAND

Name of Office	The Parliamentary Commissioner for Administrative Investigations.
Relevant Legislation	Parliamentary Commissioner Act 1974 Parliamentary Commissioner Act Amendment Act 1976
Present Incumbent	Sir David W. Longland, C.M.G. (appointed as of October 1, 1974). Sir David was formerly Chairman of the Queensland Public Service Board
Term of Office	5 years
Address of Office	9th Floor M.I.M. Building 160 Ann Street Brisbane 6000 Australia
Population of Jurisdiction	1,898,200 (Brisbane - 888,000)
Staff Complement	12 exclusive of the Parliamentary Commissioner including a Deputy Commissioner, a senior investigating officer, 2 investigating officers, an administrative officer, a personal assistant, a clerk, 3 stenographers, a clerk-typist and a general assistant.
Average Number of Complaints per Annum	Approximately 900

Descriptive Analysis

Appointment of the Parliamentary Commissioner for Administrative Investigations

The appointment of the Parliamentary Commissioner in Queensland is governed by section 5 of the Parliamentary Commissioner Act 1974 which provides that a Commissioner shall be appointed "as an officer of Parliament" by the Governor in Council. This is similar to the New South Wales legislation to which reference has been made in the analysis concerning that jurisdiction in that it allows for appointment by the Governor rather than by or on the recommendation of Parliament. The term for which the Commissioner may be appointed may not exceed five years, as is the case with Sir David, although upon expiration of his term office the Commissioner is eligible for re-appointment. The Parliamentary Commissioner Act 1974 provides that the Commissioner vacates his office on attaining the age of 67 years but this was amended by the Parliamentary Commissioner Act Amendment Act 1976 to allow that the Governor may approve the continuation in office of a particular Commissioner of the age of 67 years or more but not exceeding 70 years of age. Not only is a sitting member of Parliament disqualified from serving as Parliamentary Commissioner but so also is any person who has been elected to such office within a preceding three year period. There is also the usual prohibition against the Parliamentary Commissioner engaging in employment for compensation outside the duties of the office although in this instance it is expressed to be subject to the qualification "without the prior approval of the Premier in each particular case." Queensland being the sole unicameral legislature in Australia, removal of the Commissioner may be "on an address from the Legislative Assembly praying for his removal from his office".

Regarding the offices' staff the Act provides that the Governor may appoint such officers as he considers necessary to carry out the functions of the office based upon the recommendation of

the Commissioner. Neither the Commissioner nor his officers are subject to the provisions of the Public Service Act but the terms and conditions of the service of the Commissioner's staff shall be such as the Governor determines. Also, section 10 of the Act goes on to provide that upon the appointment of those in the Public Service as officers of the Commissioner, the rights accrued by them as of that time are preserved and service in the Commissioner's office is regarded as service of a like nature for the purpose of determining that person's rights as an officer of the Public Service.

Parliamentary Commissioner's Function and Jurisdiction

The principal function of the Commissioner is to investigate any administrative action, including any act, omission proposal or recommendation, relating to a matter of administration on the part of a government department or authority to which the Act applies. This power includes the right to investigate a recommendation made to a Minister and any action taken in consequence of that recommendation so long as the merits of the decision of the Minister or of the cabinet are not brought into question. A Schedule of departments and authorities to which the Act applies is appended to the Act and notably includes universities, colleges of education and public hospital boards as well as local authorities, the latter being city, town and shire councils and their officers. Additions and deletions to this Schedule may be made by Order in Council. Specifically exempted are administrative actions taken by a court of law or a judge, a tribunal or any member of such exercising judicial powers, a person acting as a legal adviser or counsel to the Crown in any legal proceeding, a person in his capacity as a trustee under the Trusts Act, 1973, a Master or Court Registrar and the Auditor General. Also excluded are the actions of any member of the police force in his capacity as such a member. While it is expressly stated that the Commissioner shall decline to investigate an action in respect of which the person aggrieved has or had a right of review or reference before

a tribunal or by way of proceedings in a court of law, he may take up the complaint in the event he considers that it would be unreasonable to expect that such remedy be resorted to or the matter merits investigation in order to avoid injustice. With reference to the Commissioner's powers, once again as in the case of the other Australian States he is limited to reporting his opinion in the event that he arrives at a determination upon the conclusion of his investigation that a particular action should be remedied or a law or an administered practice should be varied.

Procedure

Investigations by the office of the Parliamentary Commissioner for Administrative Investigations may commence upon a reference from the Legislative Assembly or one of its committees, as a result of a complaint made in writing by any person or on the Commissioner's own motion. The requirement that a complaint be made in writing is set out in section 16 of the Act and is strictly adhered to in the Commissioner's office. The Act also requires that the complaint be made by the person aggrieved and it would also appear that this provision is strictly interpreted. Witness in this regard an excerpt on page 4 of the First Annual Report of the Parliamentary Commissioner:

"The Parliamentary Commissioner Act prescribes that a complaint shall not be entertained under the Act if a complaint is not made by the person aggrieved. In the early days of the office, a Member of the Legislative Assembly forwarded a complaint from one of his constituents and it was necessary to draw the attention of the complainant to the Act requirement as stated in Section 16 (2). Subsequently letters were addressed to all Members of the Legislative Assembly on October 25, 1974, and February 24, 1975 to newly elected Members, to clarify this matter and to better inform Members and their Elected Secretaries."

The Commissioner may also in certain other prescribed circumstances refuse to entertain a complaint perceived by him.

In the way of investigative procedure, after a determination has been made as to jurisdiction, the department involved is advised of the details of the complaint and a report on their action requested. In order to obtain sufficient information for the investigation to begin a written complaint will often be supplemented with a personal interview of the complainant and of course an examination of any official letters and documents in his possession. Certain of the office's investigators have acquired an expertise in specific areas, an example being the actions of local authorities, and whenever possible all complaints falling into these categories will be assigned to those familiar with the particular area. A register is maintained indicating the number of cases assigned to each member of the investigative staff so that no investigator is over burdened with cases in relation to his colleagues.

As in virtually every other jurisdiction the Parliamentary Commissioner or an officer authorized by him may at any time enter upon a premises occupied or used by any government department or authority covered by the Act and carry out an inspection. Section 20 (2) of the Act goes on to assert, however, that this power shall not be exercised unless at least 48 hours notice has been given in writing to the principal officer of such department or authority of the Commissioner's intention to carry out this inspection.

General Observations

There is a parallel between the situation in Queensland and that of Ontario in that in terms of jurisdiction the state is of a huge size geographically with the population dispersed throughout the state, and in particular residing along the coast which proceeds northward from the Brisbane area for hundreds of miles. The Brisbane location is the Parliamentary Commissioner's only office facility at the present time and we were advised that such will remain the case for at least the foreseeable future although it is possible the office might be assisted by the appointment of a single officer resident in the northern part of the state. On the

other hand, a program is in effect whereby every major centre is visited at least once each year so that as far as possible all members of the public can make arrangements to be interviewed in person. We were advised that when the Commissioner or members of his staff arrange visits to centres away from Brisbane it is customary to place an advertisement in the local newspapers indicating where they will be located in order to give an opportunity to those who may wish in that area to make personal contact with office. Sir David advised us that he also utilizes the opportunities offered on these occasions to become acquainted with the members of the local administration in those areas that he visits.

AUSTRALIA - STATE OF SOUTH AUSTRALIA

Name of Office	The Ombudsman
Relevant Legislation	Ombudsman Act, 1972 Ombudsman Act Amendment Act, 1974
Present Incumbent	Gordon D. Combe, M.C. (appointed December 14, 1972). Mr. Combe was formerly Clerk of the House of Assembly in South Australia.
Term of Office	Appointed for life (mandatory retirement at age 65)
Address of Office	10th Floor G.R.E. Building 50 Grenfell Street Adelaide 5000 Australia
Population of Jurisdiction	1,200,000 (Adelaide - 852,800)
Staff Complement	6 exclusive of the Ombudsman, including a senior investigating officer, an investigating officer, an administrative officer, a clerical assistant and 2 office assistants.
Average Number of Complaints per Annum	Approximately 1,000

Descriptive Analysis

Appointment of the Ombudsman

Section 6 (1) of the Ombudsman Act, 1972 provides that the Governor of South Australia may appoint a person to be the Ombudsman. His term of office, subject to his death, resignation or removal, the latter which may come about either upon the presentation of an address from both Houses of Parliament or certain other specified circumstances, including his becoming an elected member of Parliament, is expressed to expire on the day on which the Ombudsman attains the age of 65 years. The terms and conditions of his appointment and employment are as determined from time to time by the Governor although this is subject to the qualification that the quantum of his salary and allowances may not be reduced during his term of office to an amount less than the amount payable to him at the time of his appointment. Once again, as may be seen in the case of the other mainland Australian States, this manner of appointment is not made contingent in any sense upon the wishes of the respective Houses of Parliament and it could be argued that the Ombudsman is in theory at least subject to an undesirable extent to the will of the executive arm of government. Any concerns one might have in this regard are aggravated rather allayed when one considers that the Ombudsman's staff are similarly appointed by the Governor and again, as is the case with New South Wales for example, this power in the Governor is not even expressed to be "on the recommendation of the Ombudsman". While the Ombudsman himself does not hold office subject to the Public Service Act, his officers are appointed "subject to and in accordance with" that Act.

The Ombudsman's Function and Jurisdiction

The Ombudsman's jurisdiction is set out in sections 13 and 3 of the Ombudsman Act, 1972 which authorize him to investigate any administrative act, meaning any decision, act, omission, proposal or recommendation, including a recommendation made to a Minister of the Crown, relating to a matter of administration made or done by

any department, authority or proclaimed council or any person engaged in the work of such body. In the original Act a Schedule was attached which specified the departments subject to the jurisdiction of the Ombudsman. However, the Ombudsman Act Amendment Act, 1974 repealed this Schedule and amended the original Act such that all departments and councils are now brought within the Ombudsman's jurisdiction save for those which the Governor may by proclamation declare to be a department or authority or a council to which the Act does not apply. The Governor is also empowered to vary or revoke any such proclamation made by him.

Also accomplished by an amendment effected by the 1974 Act was the inclusion in the Ombudsman's jurisdiction of the administrative acts of the Council of the University of Adelaide. The Ombudsman of South Australia did not initially have the activities of local government officials within his area of competence but his jurisdiction was extended by proclamation of the Governor in April 1, 1974 to include this field. Specifically excluded from the Ombudsman's jurisdiction are complaints concerning the exercise of judicial powers, the actions of persons acting as counsel or legal advisers to the Crown and the actions of any member of the police force in his capacity as such a member. Interestingly, the Ombudsman is also precluded from an investigation of any complaint concerning administrative acts taken by an employer vis-a-vis an employee "in their capacity as such".

The statute contains a provision similar to the provision found in the legislative enactments of other Australian States such that although the Ombudsman is precluded from investigating any matter in which there is a right of appeal, reference or review to a court or other supervising body or in which the complainant had a remedy by way of legal proceedings, he may nevertheless:

"Investigate any such administrative act where

in his opinion, in the circumstances of the case, it is not reasonable to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy."

This discretion conferred upon the Ombudsman has been exercised in the past, one particular instance being where, after considering the complaint and the complexity of the appeal structure available to the complainant, Mr. Combe concluded that the matter could best be expedited and resolved through his intervention by way of this saving provision. The Ombudsman is also granted the usual power of being able to refuse to entertain a complaint in certain specified circumstances such as the complaint being of a trivial nature.

Procedure

Any person or body of persons, including representatives of deceased persons, may complain to the Ombudsman. There is no specific requirement contained in the legislation that a complaint must be in writing although in practice we were advised that complainants are requested to reduce their complaints to writing. In the event that a complainant has difficulty doing so, an investigator will interview the complainant and assist him in reducing the details of his complaint to written form. Notwithstanding the absence of any mandatory provision we were advised that the Ombudsman's office would in no circumstance commence to act upon a complaint received by telephone alone. On the other hand, we were advised that no complainant is required to sign a complaint filed with the office for investigation. With the consent of the complainant complaints may be filed on the complainant's behalf by a member of the House of Parliament.

Whereas other Acts speak in terms of complaints by those in custody being forwarded unopened to the Ombudsman, the South Australian legislation requires that those in charge of the custody of such

persons shall not only take all steps necessary to facilitate any communication but also to ensure the privacy of that communication by such person with the Ombudsman "necessary for or incidental to the purpose of a complaint under the Act". Presumably, this section could be interpreted to mean that the correspondence from the Ombudsman to the person in custody as well as from that person to the Ombudsman shall remain unopened.

Investigations may also be made by the Ombudsman acting on his own motion. Although as is usually the case his consequential powers are limited to the ability to report his opinion, he is given broad powers of investigation which are usual in Australia, and include those of a Royal Commission as defined in the Royal Commissions Act. Either the Ombudsman or a person authorized by him in connection with an investigation may enter upon and inspect any premises used or occupied by the body investigated by him and in this regard he is not required to give any prior notice of such inspection as is the case in, for example, Queensland.

When a complaint is received in the office it is assigned to one of the investigators for investigation. The investigative staff have developed areas of expertise so that complaints will be assigned to them according to the department of government complained against. A letter is sent to the Minister concerned with a summary of the complaint and a report requested from his department. No time for reply is specified in this letter but the Ombudsman's staff have developed a system whereby correspondence with the respective files in progress is checked to ensure that government reports are returned within a reasonable period of time.

Upon receipt of the government's reply a letter is directed to the complainant informing him or her of the facts con-

cerning the complaint as related in the report. The complainant's view of the matter is then canvassed and in the event that he or she feels that the department's recitation of the facts is wrong or inaccurate the Ombudsman may then call for the file itself and conduct a further examination of that file in the Ombudsman's office. At the conclusion of the investigation an investigator will prepare a memorandum containing a proposed resolution for presentation to the Ombudsman.

General Observations

In terms of communicating his function to the population of his jurisdiction, we were advised that Mr. Combe has made use of a newspaper advertisement that runs semi-annually in the State's daily newspaper and which sets out a summary of his jurisdiction. Through the use of this device together with a distribution of a brochure explaining the role of the office Mr. Combe feels that he has communicated the essence of his mandate to the bulk of the public. The Ombudsman of South Australia has not experienced any fewer complaints proportionally from residents living outside of the capital and the complaint statistics disclose that complaints are received from those residing in the country in the same proportion that the rural population bears to the total population of the State.

Concerning the topic of the Ombudsman as an independent officer of Parliament, it is of interest to note that in place of the provision in the original Ombudsman Act, 1972 which required that the Ombudsman's annual report be made to the Premier who then caused the report to be laid before the respective Houses of Parliament, the Ombudsman Act Amendment Act, 1974 repealed this provision and provided that the Ombudsman should transmit his report directly to the President of the Legislative Council and

the Speaker of the House of Assembly. Another interesting provision of the South Australian legislation is section 26 of the Act which provides that the Ombudsman:

"May if he considers it in the public interest or in the interest of any Department, Authority or proclaimed Council publish in any manner in which he thinks fit any report of an investigation made by him whether or not the subject matter of the report has been dealt by him otherwise under this Act."

Presumably this provision would allow for the release of details concerning an investigation to the media although the matter had not been made subject of a formal report by the Ombudsman.

AUSTRALIA - STATE OF VICTORIA

Name of Office	The Ombudsman
Relevant Legislation	Ombudsman Act 1973 Ombudsman (Exemption) Act 1974
Present Incumbent	John V. Dillon C.M.G. (appointed as of October 30, 1973). Mr. Dillon was formerly Under Secretary and Permanent Head of Chief Secretary's Department.
Term of Office	Appointed for life (retirement mandatory at age 72)
Address of Office	5th Floor 406 Collins Street Melbourne 3000 Australia
Population of Jurisdiction	3,577,800 (Melbourne - 2,544,400)
Staff Complement	15 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 1,500

Descriptive Analysis

Appointment of the Ombudsman

In Victoria, as in the other Australian States, the Ombudsman is appointed by the Governor in Council. Mr. Dillon was appointed October 9, 1973 and officially took up the responsibilities of the Ombudsman's office on October 30, 1973. Neither the Ombudsman nor his staff are subject to the terms of the Public Service Act but while they serve in the Ombudsman's office the benefits of the Public Service Act will accrue to them. Moreover, if a public servant leaves the public service to come to the Ombudsman's office he may return to the public service at the same level at which he left. Staff for the office are appointed by the Governor in Council on the recommendation of the Ombudsman and salaries are tied to the public service scale. We were advised that despite the fact that the salary scale is geared to the Public Service Act, the fact is that investigators, for instance, in the Ombudsman's office would receive a higher rate of remuneration than an investigator of like status in another Department.

The Ombudsman's Function and Jurisdiction

The Ombudsman's function and jurisdiction are defined and delimited by S.2 (Interpretation) and S.13 of the Act. The principal function of the office is found in S.13(1) - "to investigate any administrative action taken in any Government Department or public Statutory Body to which this Act applies." A Schedule appended to the Act lists those Authorities to which the Act does not apply (S.13(2)). The chief jurisdictional limitations are found in S.13(3) as amended by the Ombudsman (Exemption) Act, 1974. The Ombudsman is not authorized to investigate any administrative action taken by:

- a) a court of law or by a Judge or a magistrate;
- aa) a board, tribunal, commission or other body presided over by a Judge, Magistrate, barrister or solicitor presiding as such by virtue of a statutory requirement and appointment;

- b) a person acting as a legal advisor to the Crown or as Counsel for the Crown in any proceedings;
- c) a person acting in his capacity as trustee under the Trustee Act, 1958;
- d) the Auditor - General

Since January 1, 1977 the Ombudsman's jurisdiction has been extended to include complaints concerning administrative actions taken by local governmental officers or employees.

The Ombudsman in Victoria is precluded from entertaining any complaint in respect of which the aggrieved person has or had a right of appeal, reference or review to or before a tribunal constituted under any enactment. Furthermore, this same restriction applies if the aggrieved person has or had a remedy by way of proceedings in a court of law (S.13(4)). However, there is a saving provision; that is, notwithstanding such remedy the Ombudsman may conduct an investigation if:

- (i) it would not be reasonable to expect or to have expected the aggrieved person to resort to that right or remedy;
- or
- (ii) the matter merits investigation to avoid injustice.

Mr. Dillon indicated in his first report to Parliament that lack of funds alone was not necessarily a justification for his involving these exceptions. However he stated in the same Report "that it would not be reasonable to expect an aggrieved person to resort to litigation where the costs involved would be out of all proportion to the relief claimed or where the law's inevitable delays would necessarily result in a substantial injustice continuing for a period longer than it otherwise might."

S.13(5) prohibits the Ombudsman for investigating any matter relating to persons who are or were in service under an authority so far as the complaint relates to terms and conditions of employment.

Procedure

The basic structure of the office is pyramidal in nature with the Ombudsman seeing all incoming mail and signing all outgoing correspondence. The guiding principle underlying much of the organization of this office is speed. Every morning all mail is reviewed by the Ombudsman, the Executive and Special Duties Officer and the Administrative Officer. The Deputy Ombudsman then receives all complaints and/or enquiries. If the complaint is outside the Ombudsman's jurisdiction the complaint is referred to the appropriate authority by the Ombudsman's Deputy, and, in so doing, the Deputy attempts to arrange an appointment for the aggrieved person with that authority. If the case is within the Ombudsman's jurisdictional parameters a letter will be sent to both the Minister and the Permanent Head outlining the administrative action under investigation and enclosing a copy of the letter of complaint. Complaints where jurisdiction is questionable may involve correspondence to ascertain further facts.

There is no specialization by the investigative staff in dealing with complaints assigned to them, and, as a matter of interest, the Ombudsman usually sets a time limit of two or three weeks for the receiving of a reply from the Department to which he has addressed his first communication.

Once a reply is received from the concerned Department, it will be provided to the complainant. If the complainant disputes the facts as related by the Department, then the Ombudsman's office will call for the file, photostat and return it immediately. This procedure helps avoid any dispute over loss of

original documents. At this stage, then, the investigators may conduct inspections, interview witnesses, etc., and the Ombudsman may find it appropriate to hold hearings in his office.

At the conclusion of an investigation, a draft letter proposing a resolution of the matter is prepared by the investigator and is presented to the Ombudsman for his consideration. In every case where an adverse recommendation is to be made a tentative recommendation is first presented to the Department complained against. It has been the Ombudsman's experience that this tentative recommendation usually prompts consultation and compromise on the part of the Departments involved. Indeed, in the history of the office in Victoria at the time of our investigation, this procedure had resulted in every recommendation but one being accepted. The same procedure is used in cases where the conclusions will be adverse to the complainant. He must be able to show cause why another finding, other than the proposed conclusion, should be adopted.

General Observations

The State of Victoria has a large ethnic population which is found chiefly in the City of Melbourne. In the first days of the office's operation there was a concern expressed that these ethnic groups were not utilizing the services being offered by the Ombudsman. With this concern in mind the Ombudsman met with all respective foreign Consuls so that he could familiarize them with his service and they in turn could communicate this service to those persons who comprised the interested ethnic groups. In addition, the Ombudsman made arrangements to use the Government interpretation service. Though he has no in-house interpretation facility he feels that his access to the Government service has been more than adequate.

The Ombudsman receives about 35% of his complaints from rural areas within the state but he is of the opinion that the office functions most efficiently with one central base of operations in Melbourne. The office has become well-known throughout the State, including the rural areas, as is evidenced by the high percentage of complaints from that region. This has probably been the result of the Ombudsman's vigorous campaign of speaking engagements, radio and television appearances and good, as well as regular, coverage of the Ombudsman's activities by the press. An essential component in Mr. Dillon's program of publicizing his office is his interpretation of S.25 of the Ombudsman Act 1973. He is by this section required to report to both Houses of Parliament once a year. He considers this an important aspect of his office and in his first Report to Parliament he stated:

"I believe that an interval of twelve months between my reports is far too long and that Members and the Public should be informed of my functions more regularly...I am convinced that it will add materially to the value and effectiveness of the Office. So highly do I assess the value of reporting to each House that I intend to report on the exercise of my function and matters at least once every quarter."

AUSTRALIA - STATE OF WESTERN AUSTRALIA

Name of Office	The Parliamentary Commissioner for Administrative Investigations
Relevant Legislation	Parliamentary Commissioner Act, 1971
Present Incumbent	Oliver F. Dixon (reappointed for a second term in 1977). Mr. Dixon was former- ly Chief Crown Prosecutor in Western Australia.
Term of Office	5 years
Address of Office	Central Government Buildings Corner Barrack Street and St. George's Terrace Perth 6000 Australia
Population of Jurisdiction	1,100,000 (Perth - 800,000)
Staff Complement	6 exclusive of the Commissioner
Average Number of Complaints per Annum	Approximately 1,000

Descriptive Analysis

Appointment of the Ombudsman

Mr. Dixon was appointed by the Governor to his initial 5 year term as Parliamentary Commissioner for Administrative Investigations in May 3, 1972, the first Ombudsman in Australia. The Governor also is responsible for appointing the staff for the Commissioner's office, although such appointment is "on the recommendation of the Commissioner". Section 10 of the Act excludes the Commissioner and his staff from the provisions of the Public Service Act, however, insofar as superannuation benefits and accrued rights under the aforementioned enactment are concerned, the Commissioner and his staff retain any benefits that may have accrued to them up to the time they joined the Commissioner's staff.

The Commissioner's Function and Jurisdiction

The Commissioner's basic jurisdiction is set out in S.14(1) of the Act. It reads:

- 14.(1) Subject to this Act, the Commissioner shall investigate any decision or recommendation made, or any act done or omitted, that relates to a matter of administration and affects any person or body of persons in his or its personal capacity in or by any government department or other authority to which this Act applies in the exercise of any power or function conferred by, or arising under, any enactment.

Section 13(1) of the Act defines the Commissioner's jurisdiction under the Act as extending to those departments and authorities set out in a Schedule. Additionally, this ambit will include any other department or authority which the Rules of Parliament declare to be included for the purposes of the Act. Section 13(2) delimits the Commissioner's jurisdiction by excluding from his purview the following:

- (a) the Supreme Court, the District Court of Western Australia or any other court of law;
- (b) a judge of the Supreme Court or of the District Court of Western Australia, or, any person acting in the office or executing the functions of the Master of the Supreme Court, or of the Registrar of the District Court of Western Australia;
- (c) A commissioner of any court, or a stipendiary magistrate;
- (d) a coroner;
- (e) the Auditor General; or
- (f) the Parliamentary Privileges Act, 1891.

Section 14(3) precludes the Commissioner's dealing with any matter which involves a decision made by Cabinet or by a Minister of the Crown, and furthermore he cannot question the merits of any such decision made by Cabinet or by a Minister.

The Commissioner cannot conduct any investigation where the aggrieved person had a right of appeal etc., or where he or she has or had a remedy by way of proceedings in a court of law; but section 14(5) intervenes to give the Commissioner saving jurisdiction in cases where "he is satisfied that, in the particular circumstances, it is not reasonable to expect him to resort, or to have resorted, to it".

The Schedule appended to the Act reveals that the Commissioner is given jurisdiction over all local authorities including universities. Interestingly, when the Bill was under debate, an amendment was moved and carried to the effect that the following should be deleted from the Schedule: "the Commissioner of Police and Police Officers". The Parliamentary Commissioner has adopted an interesting approach in this area. Investigations into the actions of individual police officers are declined, but those involving administrative acts of the Police Department are

acted upon. It is the view of the Commissioner, as stated in his annual report dated June 30th, 1974, that there is a distinction between the Police Department and the members of the police force; the former is a separate entity from the latter, and therefore its administrative acts fall within the legislative ambit of the Commissioner.

Procedure

Complaints coming before the Commissioner must be in writing, but on occasion an investigator will interview a complainant who comes into the office unannounced, and he will reduce the complaint to writing and have the complainant sign it.

Either House of Parliament, or any committee of either House may, by S.15(1) of the Act refer to the Commissioner any matter that it feels should be investigated by him.

The Commissioner attempts to view all incoming mail and signs all outgoing correspondence. He is responsible for closing all complaints. When a complaint is received in the office a file is immediately opened. That is to say, it is entered in the cumulative office register and assigned a number. This register will contain a name, address, the department complained against and the disposition. A file is then made up and it goes to the Commissioner for acknowledgement. The Commissioner will then assign the complaint to an investigator for investigation. Once an investigation is commenced an advice form is sent to the Minister and to the department head. This advice form will contain a copy of the actual complaint. In some cases, it becomes necessary to send a summarized form of the complaint to the department complained against. The government department is then given one month to respond to the Commissioner's initiative by means of a report concerning the alleged wrongdoing. In some cases, the department will send its file in its entirety to the Commissioner's office. In cases where the facts as related by

the government department are different than those related to the Commissioner by the complainant, the Commissioner will have the file brought to his office and/or a hearing of the matter may be convened.

At the conclusion of an investigation, the investigator will make a recommendation regarding a proposed disposition; but the Commissioner himself is responsible for the final decision on any complaint. The complainant and the Ministry are both provided with detailed reports regarding any complaint. The Commissioner has expressed concern regarding the release by a complainant of original documents given to him through the report of the Commissioner. The Commissioner is generally not concerned about the release by the complainant of his detailed report itself. The Commissioner has obviated this problem by invoking Section 19(3) of the Royal Commissions Act which allows him, in his discretion to prohibit the publication of material he deems confidential or privileged. As a matter of interest, it should be noted that when a complaint is considered bona fide even if not justified, the Commissioner has taken it upon himself to award costs to the complainant. He gave as an example the case where a hearing is held and the complainant is represented by counsel. Although no legislative provision is made for this, Mr. Dixon has made it a practice to recommend an ex gratia payment, and up to this point in time these recommendations have been accepted and acted upon by the Executive Council.

General Observations

One unique aspect of this jurisdiction is the rules adopted for the guidance of the Parliamentary Commissioner pursuant to Section 12 of the Act. Under these rules the Commissioner may, "in the public interest or in the interests of

any department, authority, organization, or person with the prior approval of the Parliamentary Committee publish reports relating generally to the exercise of his functions under the Act, or relating to any particular case or cases investigated by him." The Parliamentary Committee consists of:

In the Legislative Council:-

The President
The Chairman of Committees
The Deputy Chairmen of Committees.

In the Legislative Assembly:-

The Speaker
The Chairman of Committees
The Deputy Chairmen of Committees.

Section 30 of the Act should be adverted to because of the possible ramifications for the Commissioner which could flow therefrom. Section 30 reads as follows:

30. Neither the Commissioner nor any of his officers is liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act, unless the act was done negligently or in bad faith.

The question arises as to just what type of conduct will amount to negligence within the meaning of the section and what type of censure would the Commissioner attract if he were found to have so acted?

CANADA - PROVINCE OF ALBERTA

Name of Office	The Ombudsman
Relevant Legislation	The Ombudsman Act The Ombudsman Amendment Act, 1968 The Ombudsman Amendment Act, 1972 The Ombudsman Amendment Act, 1975
Present Incumbent	Dr. Randall Ivany (appointed May 1, 1974). Dr. Ivany was formerly Dean of Edmonton.
Term of Office	5 years
Address of Office	729 Centennial Bldg. 10015 - 103 Avenue Edmonton, Alberta Canada T5J 0H1
Population of Jurisdiction	1,826,000
Staff Complement	15 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 1,100

Descriptive Analysis

The Office in Alberta was created in July, 1967, it being the first such operation in North America. George McClellan was appointed as the first Ombudsman and he officially commenced duties on September 1st, 1967. He retired in 1974 and was succeeded by Dr. Randall Ivany on May 1st, 1974.

The population of the jurisdiction is largely urban. Besides the two main urban centres, Edmonton and Calgary, there are a number of smaller cities spread about the province. The result is that much of the population resides in an urban setting.

An interesting feature of this jurisdiction is that there is a main office in Edmonton and a branch office in Calgary. Four people work out of the Calgary office, two investigators and two stenographers. As well, Dr. Ivany undertakes an extensive program of speaking engagements every year, and he travels around the province taking complaints. There is also in print a brochure entitled "About Your Ombudsman" which is available in various offices throughout the province, but which has not been systematically distributed as was the case in New Brunswick.

In Alberta the Ombudsman is designated an "officer of the Legislature" appointed by the Lieutenant Governor in Council on the recommendation of the Assembly. Regarding staff, Section 10 provides that "there may be appointed such officers and employees as may be necessary to assist the Ombudsman in the efficient carrying out of his functions" under the Act. The staff of the Ombudsman is governed by the terms of The Public Service Act and the employees are considered civil servants. This categorization does not apply to the Ombudsman himself. The great majority of investigators on the staff have law enforcement backgrounds. It is anticipated that more staff will be hired, mainly to assist in the investigation of complaints.

The Ombudsman's function and jurisdiction is set out in Section 11(1) of the Act. It reads as follows:

11(1): It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of person in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment."

In Section 2(a) we find an "agency" defined. It is expressly provided that an agency, within the meaning of the Act includes the Workmen's Compensation Board. Specifically, the Section reads:

- 2: In this Act,
- a) "agency" means an agency of the Government of Alberta and includes The Workmen's Compensation Board;
 - b) "department" means a department of the Government of Alberta;"

It was considered necessary to include an explicit reference to the Workmen's Compensation Board because there was conflicting opinion as to whether the Board was included within the Ombudsman's jurisdiction during the first year of the office's operation. As a result the Act was amended in 1968 to include the new definition of "agency".

The Ombudsman is given the authority to initiate investigations on his own motion by Section 11(2) of the Act. By Section 11(4), any committee of the Assembly may refer any petition before it to the Ombudsman for investigation and report by him.

The Ombudsman's jurisdiction is circumscribed by Section 12(1) which bars him from entertaining complaints respecting:

- a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or
- b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown in relation to any proceedings.

The Ombudsman has no jurisdiction over the functions of a court nor does he have any over local government.

Complaints and their Processing

Section 13(1) requires that every complaint coming to the Ombudsman's office be in writing. This provision is strictly adhered to by the Ombudsman in the sense that he asks every complainant to submit his complaint in written form. If a person comes into the office to make an oral complaint or for some reason it is necessary for an investigator or other staff member to keep notes or reduce the complaint to writing, the aggrieved person will be required to sign the notes or a summary of the complaint at the conclusion of the interview.

Once a complaint is received, it is transmitted to the Complaints Analyst who will open a file, assign it a number,

review it and make comments regarding jurisdiction and who will finally, if the complaint is within the Ombudsman's jurisdiction, make a proposal as to the resolution of the matter. It is then passed on to the Ombudsman for comment and assignment. Complaints over which the Ombudsman has no jurisdiction are invariably referred to a more appropriate agency having regard to the nature of the complaint. In some cases the Ombudsman will keep informed of such a complaint after it has been referred to another agency.

Questions regarding jurisdiction are decided by the solicitor to the Ombudsman, sometimes in consultation with the Ombudsman. Once jurisdiction is decided, an investigation will commence. Under normal circumstances, the Deputy Minister will be notified of the proposed investigation by letter and there will then be a request for information. This may be followed up by attendances at the offices of the government agency involved where documents will be examined and interviews of administrators conducted. In other cases, the investigator will simply rely on the responses received from a government agency. There has been no formal specialization by members of the investigative staff; however, over the years an informal specialization has developed. Likewise, though no formal correspondents are indicated in any given department, a system has developed whereby the investigators have established their contacts within each department. One interesting feature of the office concerns the investigator's responsibility for keeping the complainant informed of an on-going investigation. There is no time limit for the completion of any investigation, but an investigator must make a monthly report to the complainant informing him of the status of the complaint.

Upon completion of his investigations, the investigator will make a recommendation to Dr. Ivany regarding the proposed

disposition of the complaint. Dr. Ivany may accept or reject the recommendation or he may send it back for further investigation. Complex files are considered jointly by Dr. Ivany, the Ombudsman's solicitor, and the chief investigator. Once a decision is made the complainant is informed. Formal recommendations are made to the Deputy Minister and every recommendation, indeed every letter leaving the office, leaves over the signature of Dr. Ivany. In a difficult case the Ombudsman may personally contact the Minister having responsibility for the agency or department involved by the complaint.

The Calgary office functions as an appendage of the Edmonton office. Inquiries made at the former office are referred to Edmonton unless it appears that the complaint is obviously outside the Ombudsman's jurisdiction, in which case one of the two investigators will refer the matter to the correct agency. The Calgary office, staffed by two investigators handles about 200 inquiries per month. Complaints under investigation by the Calgary office will have been assigned to that office by the chief investigator at the parent Edmonton office.

CANADA - PROVINCE OF MANITOBA

Name of Office	The Ombudsman
Relevant Legislation	The Ombudsman Act
Present Incumbent	George W. Maltby (reappointed for a second term effective April 1, 1976). Mr. Maltby was formerly Chief Constable of the St. James Police Department.
Term of Office	6 years
Address of Office	509 - 491 Portage Avenue Winnipeg, Manitoba Canada R3B 2E4
Population of Jurisdiction	1,018,000
Staff Complement	5 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 650

Descriptive Analysis

The Ombudsman Act, based on the New Zealand, Alberta and New Brunswick models, came into force April 1, 1970. The Ombudsman, by Section 3(1), is an officer of the Legislature, and he is appointed by the Lieutenant Governor in Council on the recommendation of an all party committee of the Legislature. The employees of the Ombudsman Office are subject to the terms of The Civil Service Act, however, the Ombudsman is not included in this group.

The Province of Manitoba is populated by just over one million persons, and of that number, approximately 575,000 reside within the metropolitan boundaries of the City of Winnipeg. It is felt by the Ombudsman's Office that a Branch Office is not required in view of the great number of people residing in Winnipeg in relation to the total population of the province.

The Province is inhabited by many diverse ethnic groups, including Indians, Metis, French Canadians and European groups, especially Ukrainians. It has been the experience of the Manitoba Ombudsman that these ethnic minorities do not complain to him qua ethnic minorities. When such groups do communicate with the office in a language other than English, members of the staff will deal with such persons in their native language.

The Ombudsman's Office at one time had a solicitor on staff, but recently the Ombudsman decided to retain the services of outside legal assistance, and in furtherance of this, a private law firm in Winnipeg is now on retainer to the Ombudsman's Office.

Mr. Maltby has not made it a practice to go on circuit in the Province to publicize his office or to gather complaints. He has, however, sought to publicize his office by making personal visits to complainants and by distribution of his Annual Report.

In addition, he has made a great number of speeches throughout the province pertaining to the functions and jurisdiction of his office. Mr. Maltby includes a copy of his office's brochure in every letter of acknowledgement that leaves the office. The Ombudsman ascribed the greater numbers of complaints received in 1975 over 1973 and 1974 to the fact that his office is becoming much more widely known throughout the entire Province. He cites, as further evidence in support of this proposition, the fact that fewer and fewer of the complaints he receives are of the non-jurisdictional variety. As a final publicity tool he has advertised in almost every newspaper in the Province, including the ethnic press. He also intends to distribute copies of his pamphlet throughout the Province using the Manitoba Hydro Commission mailing as his vehicle.

The Ombudsman's jurisdiction is set out in Section 15 which follows:

"The Ombudsman may, on a written complaint or on his own initiative, investigate any decision or recommendation made, including any recommendation made to a Minister or any act done or omitted, relating to a matter of administration in or by any department or agency of the government, or by an officer, employee or member thereof, whereby any person is or may be aggrieved."

Section 1 of the Act is the definition section and the phrase "agency of the government" is defined therein to mean:

"a)... any board, Commission, association or other body of persons, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors which,

- i) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council, or

- ii) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown;".

A committee of the Assembly (Section 16(1)) may, at any time, refer to the Ombudsman any petition that is before the Committee for consideration. Likewise, by Section 16(2), the Lieutenant Governor in Council may refer to the Ombudsman any matter relating to administration in or by any department or agency of the government, or by any officer, employee or member thereof.

The Ombudsman's jurisdiction is restricted by Section 18 which precludes his investigation of:

- a) any decision, etc. of the Legislature, the Assembly, the Lieutenant Governor or a committee thereof, or the Executive Council or a committee thereof; or
- b) the functions of a court or judge of a court, a referee or master of a court, or a magistrate or a justice of the peace;
- c) any award, decision, etc. of an arbitrator or a board of arbitrators in an arbitration to which the Arbitration Act applies; or
- d) any decision, etc. where there was a right of appeal etc. under any Act whether or not the appeal etc. has been exercised and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied in the particular case that it would have been unreasonable to expect the complainant to resort to the tribunal or court, but in such case the investigation shall not commence until after the time prescribed for the exercise of that right to appeal, object or apply, has expired.

The Ombudsman makes his own decisions on jurisdiction unless the area is questionable in which case he will consult with his solicitors. The Ombudsman will assume jurisdiction in questionable areas until he is challenged. On one occasion, an application under Section 20 of the Act was brought in the Court of Queen's Bench for a declaratory judgment determining a question of jurisdiction, and the Ombudsman's position that he had authority over a planning commission making recommendations to a Minister was upheld.

Complaints and their Processing

The Act requires that all complaints be in writing and the Ombudsman's staff adheres strictly to this provision to the extent of requiring that complaints be signed. Every complaint that comes into the office is seen by the Ombudsman. Once a complaint is received, it is acknowledged by a form letter. When Mr. Maltby commences his investigation, the Deputy Minister, as a matter of course, is not notified, but the government employee who could rectify the matter is contacted. An actual copy of the complaint is sent along with this initiating letter. The initial letter will request information pertinent to the complaint, and upon receipt of this material the investigator may follow it up with a personal visit to the department, if he feels the case warrants it. An informal system of specialization has grown up in the office. At the conclusion of the investigation the investigator will make a recommendation to Mr. Maltby, who then has final authority and responsibility for the disposition of the complaint.

CANADA - PROVINCE OF NEW BRUNSWICK

Name of Office	The Ombudsman
Relevant Legislation	The Ombudsman Act The Ombudsman Act Amendment Act
Present Incumbent	Joseph E. Bérubé (appointed to office June 9, 1976). Mr. Berube was a former Provincial Court Judge.
Term of Office	10 years
Address of Office	Post Office Box 6000 703 Brunswick Street Fredericton, New Brunswick Canada E3B 5H1
Population of Jurisdiction	693,000
Staff Complement	5 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 1,200

Descriptive Analysis

The Office of Ombudsman was created in New Brunswick in 1967, it being the second such office in Canada at that time. The province has a population of 693,000 of whom approximately 35% are of French Canadian descent. Notwithstanding, we were told in 1975 that almost 90 percent of the complaints received in the office were in the English language. However, this may not be indicative of the language background of those complaining because this figure is based on the initial letter of complaint only. The office functions on a totally bilingual basis, although dealings with government departments are usually conducted in English. No reason was advanced for the small number of complaints coming into the office from those of French language descent residing in the province.

The number of complaints increased tremendously in 1975. One reason advanced for this was a brochure that was distributed to every household in the province in early 1975 entitled "Know your Ombudsman". This pamphlet described the types of complaints that could be investigated and what the Ombudsman's powers of investigation were.

The Ombudsman is appointed by the Lieutenant-Governor in Council on the recommendation of the Legislative Assembly. The Ombudsman may appoint such employees as he deems necessary.

The Ombudsman's jurisdiction is to be found in Section 12(1) of the Act wherein it is stated:

(12)(1) Subject to subsection (2) the Ombudsman may, either on a written petition made to him or on his own motion, investigate (a) the administration of any law of the Province by a department or agency or any officer thereof, or (b) the administration of any law of a municipality within the Province by a department or agency or any officer thereof where- by any person is aggrieved or, in the opinion of the Ombudsman, may be aggrieved.

"Department or agency" is defined to mean:

"a department or agency, incorporated or otherwise, of the Government of the Province or of a Municipality within the Province."

Section 13(2) allows a committee of the Legislative Assembly to refer to the Ombudsman any petition that is before the Committee and may request the Ombudsman to investigate and report upon the matter.

The Act does not empower the Ombudsman to investigate the actions and decisions of judges or the functions of any court of New Brunswick, nor does it allow him to look into the deliberations and proceedings of the Executive Council or any committee thereof (S.11). There is no discretion allowed for the Ombudsman to investigate any matter for which an appeal or right of review is outstanding until that right has been exercised or the time for its exercise has expired.

The Ombudsman has taken a very liberal view with respect to the Section 12 requirement that a complaint be received in writing. A member of the staff may take a complaint over the telephone and in addition, any notes made by an interviewer during the course of his or her interview with a complainant are not required to be signed by the complainant.

Complaints and Their Processing

It goes without saying that the severe staff limitations facing the office have made it necessary for most investigations to be carried out through correspondence alone. Attendant with this situation is the fact that investigators have to depend largely upon what the government department complained against tells them. The system, to work, must have the cooperation of the government agencies falling within the Ombudsman's jurisdiction. The Ombudsman's annual reports indicate that by and large this has been the case.

Once a complaint is received in the office, the question of jurisdiction is settled, and any pertinent facts not revealed by the complaint will be gathered from the complainant. The department is then asked to provide comments or explanations regarding the substance of the complaint. During this initial stage the department may be required to supply reports or answers to specific questions. It has been the case in this jurisdiction that the Ombudsman has on occasion had to re-write letters to a government department requesting information or noting the paucity of the information supplied and seeking greater numbers of files and/or documents. In cases where information supplied is questionable, or unsatisfactory, the investigator will, where possible, conduct verification checks.

Though all "opening of an investigation" letters are sent to the Deputy Minister, the investigators will contact people known to them in each department when they want to obtain information. The office makes use of the "brought forward" system used in other jurisdictions to ensure that no complaint will remain untouched; under this system, the agency is given 2 weeks to reply to the Ombudsman's queries. Decisions as to whether a complaint is justified or not are made by the investigators on the case and the Ombudsman will be consulted before any final disposition is arrived at. In important cases the Ombudsman is kept abreast of the ongoing investigation. In complaints that are time-consuming and exhaustive the Ombudsman's staff will keep the complainant informed of their progress.

CANADA - PROVINCE OF NEWFOUNDLAND

Name of Office	Office of the Parliamentary Commissioner (Ombudsman)
Relevant Legislation	The Parliamentary Commissioner (Ombudsman) Act 1970 amended May 2, 1975 by The Parliamentary Commissioner (Ombudsman) (Amendment) Act 1975
Present Incumbent	Ambrose H. Peddle (appointed June 16, 1975). Mr. Peddle was a former Member of the House of Commons.
Term of Office	10 years
Address of Office	324 Imperial Oil Building 85 Elizabeth Avenue St. John's, Newfoundland Canada A1C 5T7
Population of Jurisdiction	541,000
Staff Complement	3 exclusive of the Ombudsman
Average Number of Complaints per annum	Approximately 550

Descriptive Analysis

By S.14(1) of the Act the Parliamentary Commissioner is empowered to investigate any decision or recommendation made, or any act done or omitted relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any Department or agency, or by any officer, employee or member thereof in the exercise of any power of function conferred on him by any enactment.

The definition section, S.2 defines "Department" as meaning any department of the Government of the province. "Agency", as it appears in S.14(1) is defined as any agency of Her Majesty or of Her Majesty's Government including The Workmen's Compensation Board and in addition any body deemed to be an agency for the purposes of this Act by order of the Lieutenant Governor in Council upon the recommendation of the House of Assembly.

The restrictions on the Parliamentary Commissioner's power to act are found in S.15 and in S.35. By S.15 the Ombudsman is precluded from investigating any decision, recommendation, act or omission in cases where there exists under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or tribunal constituted by or under any Act until after the right of appeal, etc. has been exercised or until after the time prescribed for the exercise of that right has expired.

Moreover, S.15 prohibits the Parliamentary Commissioner's investigation of any decision, etc. of a person acting as a Solicitor or Counsel for the Crown in any proceedings.

S.35 states that the Act has no application to judges, magistrates and the functions of any court of the province. Likewise, the Ombudsman has no jurisdiction over the deliberations and proceedings of the Executive Council or any committee of the Executive Council.

CANADA - PROVINCE OF NOVA SCOTIA

Name of Office	The Ombudsman
Relevant Legislature	The Ombudsman Act
Present Incumbent	Dr. Harry D. Smith (appointed April, 1976). Dr. Smith was formerly President of Kings College.
Term of Office	5 years
Address of Office	Suite 710 Royal Bank Building Halifax, Nova Scotia Canada B3J 3B7
Population of Jurisdiction	829,000
Staff Complement	6 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 1,000

Descriptive Analysis

In February, 1970 a Select Committee of the Legislature urged the adoption of the Ombudsman concept and went on to recommend that the legislation be patterned after the New Brunswick and Alberta enactments. On December 18, 1970 The Ombudsman Act received Royal Assent. Under that Act the Ombudsman is designated as an "officer of the House" and is appointed by the Governor in Council. Staff for the office may be appointed by the Ombudsman "subject to the approval of the Governor in Council."

The Ombudsman's jurisdiction is founded in Section 11 (1) of the Act which is as follows:

11.(1) Subject to subsection (2), where any person is aggrieved, or, in the opinion of the Ombudsman, may be aggrieved, the Ombudsman, on the written complaint of or on behalf of the person aggrieved or on his own motion, may investigate the administration,

- (a) by a department or an officer thereof, of any law of the Province;
- (b) by a municipal unit or an officer thereof, of any law of the municipal unit or any law of the Province that applies to the municipal unit.

As may be expected, although the Ombudsman is empowered to investigate the provincial and municipal administration he is precluded from entertaining any complaints concerning:

- 10.(a)...judges, magistrates and justices or...the functions of any Court of the Province; and
- (b)...deliberations and proceedings of the Executive Council or any committee thereof.

Furthermore, S.11(2) prohibits investigations where the aggrieved person has a right of appeal or a right to apply for a review to any court or tribunal constituted by or under any Act, whether or not the right of appeal or review has been exercised and whether or not the time prescribed for the exercise of that right has expired. The restriction thus imposed on the Ombudsman's investigatory powers is a severe one in that he is prevented from investigating any matter where an appeal on the merits is provided for by Statute, regardless of whether the right of appeal is exercised. He is also barred from looking into any decision, recommendation, act or omission of any person acting as a solicitor or prosecuting officer for the Crown, or acting as counsel for the Crown in relation to any proceeding.

Generally, the office will assume jurisdiction and investigate a complaint even in questionable cases if it feels there should be a remedy and its jurisdiction is not challenged. In cases where the Ombudsman obviously has no jurisdiction he will, in all cases, attempt to point the complainant in the direction of the appropriate authority.

Complaints and Their Processing

Though S.11(1) speaks of a complaint being in written form when it comes before the Ombudsman this requirement is not strictly adhered to by the office. It is the procedure to have a staff member reduce a verbal complaint to writing in cases where a complaint is telephoned in but a complainant is not asked to sign any complaint reduced to writing in the course of an interview of the said complainant by a member of the Ombudsman's staff.

There is a procedure whereby a complainant who sends in a written complaint will automatically receive a written reply, whereas those who telephone in or attend at the office do not, as a matter of course, receive an acknowledging letter. There is

no arrangement by which a member of the Legislature would be informed of a complaint by one of his constituents.

The complaints are usually investigated by correspondence, that is to say, a letter is dispatched to the department concerned asking for their explanation of the matter. Following this there will be further communication with the complainant which may consist of a further interview. The complainant is not generally kept abreast of an ongoing investigation unless the matter becomes more complicated than it initially appeared and/or it will take longer than the time normally required for an investigation (two to three weeks). The person who investigated the complaint will usually make the recommendation as to its disposition. If the matter is an important and/or sensitive one then Dr. Smith will be kept advised of the progress of the investigation.

It is interesting to note an outstanding increase in the number of complaints received by the Ombudsman's office after 1973. The number of complaints more than tripled between 1973 and 1974. Dr. Smith attributed the increase to increased media coverage, the C.B.C. program, the Ombudsman, and an advertising campaign in which the Ombudsman placed a notice in every newspaper in the province which, in effect, asked the people of the province if they had any complaints against the province or municipal governments in that province.

The Ombudsman and his staff are labouring under a handicap if one considers the size of his staff and the tremendous jump in the numbers of complaints he began to receive in 1974. Though, as stated above his complaints more than tripled he must attempt to deal with his increased workload with the same number of staff and budget. As a result of this situation it has become necessary to curtail some activities, such as going on circuit to publicize his office

in the outlying areas and to receive complaints. The Ombudsman also feels that he must use the press more, simply in an effort to put pressure on the government and to inform the people of the province that because of his increased caseload it will take longer to deal with problems after they have come into his office.

CANADA - PROVINCE OF QUEBEC

Name of Office	The Public Protector
Relevant Legislation	The Public Protector Act
Present Incumbent	Dr. Luce Patenaude, Q.C. (appointed as of September 1, 1976). Dr. Patenaude was formerly a professor of law at the University of Montreal.
Term of Office	5 years
Address of Office	14 Haldimand Street Quebec, Quebec Canada G1R 4N4
Population of Jurisdiction	6,176,000
Staff Complement	25 exclusive of the Public Protector
Average Number of Complaints per Annum	Approximately 7,000

Descriptive Analysis

The Public Protector Act was assented to November 14, 1968, and the province's first Public Protector, Louis Marceau, officially took up his duties on May 1, 1969. The Public Protector is approved by a two-thirds vote of the Legislative Assembly on the motion of the Prime Minister. The office in Quebec has its base in Quebec City and it has a branch office located in Montreal. The population of Quebec is approximately 6.2 million, of which number about 3 million live in Montreal and one-half million reside in Quebec City.

Section 11 of the Act stipulates that the functionaries and employees of the Public Protector shall be appointed by the Public Protector, but their number and their rates of remuneration will be determined by the Lieutenant-Governor in Council. Neither the Public Protector, his assistant nor his functionaries or employees shall be subject to the terms of The Civil Service Act.

The Public Protector's functions and duties are set out in Division III of the Act, Section 13 of which states:

13. "The Public Protector shall make an investigation upon the application of any person whenever he has reason to believe that in the exercise of an administrative function the holder of any position, office or employment under the government or under any government department or body has wronged such person.

"He shall also make an investigation, upon the application of any person, into the procedure followed by a government body or a member thereof in the exercise of a quasi-judicial function, whenever he has reason to believe that the proceedings are affected by some gross irregularity and that justice has not been, or will not be done.

"He may also make an investigation on his own initiative in any such case."

Section 15 of the Act defines a "government body" as,

"... any body whose functionaries or employees are by law appointed and remunerated in accordance with the Civil Service Act, and also the Québec Civil Service Commission, the Québec Municipal Commission and the Rental Commission."

The Public Protector's jurisdiction as set out and defined by Sections 13 and 15 of the Act is restricted by Sections 16 and 17. Section 16 precludes the Public Protector from looking into complaints concerning the courts, the Lieutenant-Governor or the Lieutenant-Governor in Council. As a consequence of Section 17 the Public Protector cannot entertain complaints where the aggrieved person has a right of appeal or other "equally adequate recourse". Furthermore, the Public Protector is barred from acting on a case where more than one year has elapsed since the aggrieved person had knowledge of the act or omission in question, unless the person can show that it was impossible for him to act sooner. This section is restrictive of the Ombudsman's jurisdiction in the sense that he is precluded absolutely from investigating in cases where there is some avenue of appeal or other adequate remedial procedure.

By Section 22 of the Act, the Public Protector or his staff are required to assist any prospective complainant in the drafting of an application for investigation if the person desiring to apply so requires the office's assistance. This section would seem to be novel in terms of the positive requirement on the office to assist in the preparation of an application. Although the offices in most jurisdictions will give such assistance, there is no legislative requirement in their respective statutes requiring them to do so.

As already indicated, the Office of the Public Protector has its central office in Quebec City, and there is a branch office in Montreal. The office has an 'adjoint', or a principal assistant to the Public Protector who is in charge of the Montreal office. In addition, there are another nine assistants to the Ombudsman, each of whom is expert in a particular area of concern. Whenever a complaint comes to the office, it will go directly to the assistant designated to handle that specific type of case. The office has an administrative secretary who handles the daily functioning of the office.

Complaints and their Processing

When a complaint reaches the office, whether by means of a letter or a telephone call, or when a complainant arrives in person, the matter is forwarded immediately to the assistant concerned. The assistants act as complaint receivers on a rotating basis so that a different one will be required to receive complaints every day. The assistant receiving the complaint completes a memorandum called the internal receipt form, which sets out the essential details of the complaint. The assistant receiving the complaint will decide whether it is one over which the Ombudsman has jurisdiction. In this regard, if any doubt exists the complaint will be treated as falling within the Ombudsman's jurisdiction with the proviso that it may be rejected at a later date. The complaint is then given to the clerical staff for filing and codification. Complaints received by mail receive the same treatment except they are coded first and then sent to an assistant for analysis.

The initial investigation will see the particular civil servant involved contacted. A report will then usually be forthcoming from the Ministry. Once this report is received the assistant may attend at the offices of the government agency to personally inspect documents. After a thorough check has been

made and a complete file is assembled, a decision will be made as to whether the complaint is founded or not. More serious recommendations, that is, those made to the Deputy Minister or the Minister will usually be made by the Public Protector, while less serious ones will be made by the assistant handling the case.

The Public Protector will take up those cases where a recommendation was made by an assistant but was not acted upon by the Ministry. Once a reply is received from the Ministry, a letter will go out to the complainant advising him of the outcome of the investigation.

CANADA - PROVINCE OF SASKATCHEWAN

Name of Office	The Ombudsman
Relevant Legislation	The Ombudsman Act, 1972 as amended.
Present Incumbent	David A. Tickell (appointed April 4, 1977). Mr. Tickell was formerly a Crown Solicitor in the Saskatchewan Attorney-General's Department.
Term of Office	5 years
Address of Office	2310 Scarth Street Regina, Saskatchewan Canada S4P 2J7
Population of Jurisdiction	932,000
Staff Complement	11 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 850

Descriptive Analysis

The Province of Saskatchewan has a population slightly in excess of 900,000 of which number approximately 150,000 reside in Regina and 130,000 live in Saskatoon. About 25 percent of the population is of German descent, while 16 percent of the population is of Ukrainian extraction. Less than 5 percent of the total population is of French Canadian background. There are about 125,000 persons residing in the province who are of Canadian Indian descent. This is the single largest concentration of such people in any one province of Canada. However, we were told that the Ombudsman receives virtually no complaints from this group. The Indian community has largely dropped out of the so-called "white" society and thus it makes little or no use of the Ombudsman facility.

The Ombudsman in Saskatchewan is appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly. The term of office is five years and an Ombudsman may be re-appointed to one additional term of the same duration. While the Ombudsman is not subject to The Public Service Act, this Act does apply to the members of his staff.

The Ombudsman's function and jurisdiction is delineated in Section 12(1) of the Act. It reads:

12.-(1) It is the duty of the Ombudsman and he has the power to investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved.

The Ombudsman can investigate of his own motion (Section 12(2)), and by Section 12(3) a committee of the Assembly may refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration. Section 12(4) empowers the Lieutenant-Governor in Council to refer to the Ombudsman for investigation and report any matter relating to the administration in or by any department or agency of the government or by any officer, employee or member thereof.

The Ombudsman's powers of investigation are circumscribed by Section 15 of the Act. Notice Section 15(1)(f) which restricts his investigatory powers to a greater extent than is the case in any other Canadian jurisdiction. By Section 15 the Ombudsman is precluded from investigating:

- a) any decision, recommendation, act, order or omission of the Assembly, a committee of the Assembly, the Lieutenant-Governor in Council, the Executive Council or a member or committee of the Executive Council;
- b) any decision, order or omission of a court, judge of a court, a referee or local master of a court, a magistrate or a justice of the peace made or given in any action or proceedings in the court or before the judge, referee, local master, magistrate or justice of the peace;
- c) any award, decision, recommendation or omission of an arbitrator, or board of arbitrators, established by or under any Act;
- d) any decision, recommendation, act or omission in respect of which there is under an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or under an Act, whether or not that right of appeal, objection or application has been exercised

in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal, but in that case the investigation shall not commence until after the time for the exercise of that right to appeal, object or apply has expired;

- e) any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Crown in relation to any proceedings;
- f) any decisions, recommendation, act or omission of a deputy minister, an acting deputy minister, associate deputy minister or assistant deputy minister, when acting as such or of any person who by virtue of his appointment or actual employment is expressly or by necessary implication directly responsible to a minister;
- g) any decision, recommendation, act, order or omission of any department or agency of the government, or an officer, employee or person, in relation to any matter arising between the department, agency, officer, employee or person, and the government of another province or the Government of Canada or a municipality or school board.

Complaints and their Processing

Complaints will be received at either the Regina or Saskatoon offices and they will only be accepted if they are in writing and are signed by the complainant. Once jurisdiction is decided in favour of a complainant, a letter is sent to the Deputy Minister and along with this letter will be a copy of the actual complaint. When the complaint is resolved, the

complainant will receive a letter informing him that an investigation is under way, but he will not be contacted again until the investigation is completed. The Member of the Legislative Assembly for a constituent who has complained to the Ombudsman will not be informed that an investigation is under way. Unless the complaint is a complex one or one in which contentious issues arise, the Ombudsman will not be called into the investigation. The investigators themselves will decide questions of jurisdiction. In questionable areas, the Ombudsman's policy is to proceed until he is challenged. The investigative staff has developed a degree of specialization, and rather than establishing a system of contacts they have developed their own group of informal contacts within each government agency.

Recommendations and dispositions of complaints are handled by the investigative staff itself unless the complaint involves some complicated or sensitive issue.

When Mr. Boychuk was Ombudsman he was given wide coverage by the press and he accepted as many speaking engagements as he could fit into his schedule. Soon after his appointment he met with all the Deputy Ministers in the government; in the same vein, he instituted a series of monthly meetings with heads of departments who keep them abreast of the operations of the office. These meetings were an invaluable aid to the smooth functioning of the office.

When Mr. Boychuk was Ombudsman he also told us he had spoken in every penal and psychiatric facility in the province, to both staff and inmates or patients. Every inmate entering a provincial institution is provided with a handout describing the Ombudsman's function, his address, and the confidential nature of any complaint coming to the Ombudsman. Finally, a pamphlet was distributed throughout the entire province using the postal service. The pamphlet described the Ombudsman's functions and jurisdiction.

The Saskatoon office is given much more independence than is the branch office in Calgary, Alberta. The two investigators in the Saskatoon office can receive, investigate and make recommendations on any complaint, up to and including the Deputy Minister level. It is conceivable that a complaint could be worked through and resolved in the Saskatoon office, and it might never come to the attention of the Ombudsman until after it is disposed of. Of course, contentious cases are sent to the Regina office as are summary sheets of every single complaint having come before the Saskatoon office. Matters may be referred to the Saskatoon office from the main Regina office, but there is no system for keeping duplicate files in each office.

Name of Office	Folketingets Ombudsmand
Relevant Legislation	Pursuant to Section 55 of the Constitution of 1953, the Ombudsman Act (No. 203) was passed on June 11, 1954 and amended by Act number 205 of June 11, 1959, Act Number 142 of May 17, 1961, and Act Number 258 of June 9, 1971. The Ombudsman is also governed by a detailed list of Directives - Government Notice Number 48 of February 9, 1962.
Present Incumbent	The first Ombudsman, Dr. Jur. Stephan Hurwitz, was elected by the Folketing (Parliament) in March, 1955. Professor Hurwitz retired in June, 1971 at the age of 70 and was succeeded by Mr. Lars Nordskov Nielsen on July 1, 1971. Mr. Lars Nielsen was formerly Director of the Danish Prison Administration.
Term of Office	Elected by the Parliament after every general election, i.e. term of Parliament.
Address of Office	Folketingets Ombudsmand Frederiksberggade 2 D.K. 1459 Copenhagen K., Denmark
Population of Jurisdiction	4,900,000 (Copenhagen - 1,500,000)
Staff Complement	22 exclusive of the Ombudsman, including 2 heads of divisions, 10 investigators trained in law of whom 2 are part-time, 8 typists and stenographers of whom 2 are part-time, and 2 part-time university students.
Average Number of Complaints per Annum	Approximately 1,900

Descriptive Analysis

Statutory Background

The background against which the Ombudsman functions in Denmark is similar to Canada in that Denmark has a parliamentary form of government in which the Ministers of government exercise final administrative power over their departments and are answerable to Parliament although they need not be members of Parliament. At the same time, there is no system of administrative courts in Denmark although the ordinary courts may be resorted to if the legality of an administrative decision is to be brought into question.

Section 55 of the Constitution of June 5, 1953 provides as follows:

"Statutory provision shall be made for the appointment by the Folketing of one or two persons, who shall not be members of the Folketing, to supervise the civil and military administration of the State."

Commenting upon the debates in the Folketing preceeding the creation of the office of Ombudsman in Denmark, the present Ombudsman, Lars Nordskov Nielsen, made the following comments:

"First, the Ombudsman was to act on behalf of Parliament in relation to the administrative agencies, strengthening the control traditionally exercised by the supreme elective body and its individual members over the Ministers and their officials. Such strengthening was considered necessary because of the growing power, especially the wide quasi-legislative power, which had been delegated to the Danish government services and because of the increasing complexity of the administrative process.

Second, the Ombudsman was to be a safeguard of law and order for the individual: a sort of appellate institution for citizens who came into conflict with the administrative agencies. In the words of the parliamentary spokesman of the Labour Party, the Ombudsman was meant to be the protector of the man in the street against injustices, against arbitrariness, and against the abuse of power on the part of the executive."

(Nielsen, Lars Nordskov. "The Danish Ombudsman", Dublin, 1972).

Election of the Ombudsman

The Ombudsman is the representative of Parliament and acts on behalf of Parliament. He is elected by Parliament after every general election and may be re-elected indefinitely. Parliament may dismiss him in the event that he no longer enjoys its confidence.

An Ombudsman may not be a member of Parliament, nor may he engage in any other public or private employment without the consent of a special parliamentary committee. A prerequisite to becoming Ombudsman is that the candidate be legally trained.

The Ombudsman appoints and dismisses his own staff. One interesting aspect of the staffing of the office is that there has recently been an arrangement concluded whereby two Ministries have each assigned an official to work in the Ombudsman's office for a period of one and a half years. In this way the Ombudsman is in a position to call upon members of his own staff who have an expertise in administration; at the same time Mr. Nielsen, the present Ombudsman, is aware of the possible criticisms of such a program and acknowledged that such staff members should remain in a numerical minority.

The Ombudsman's Function and Jurisdiction

Pursuant to section 5 of the Ombudsman Act, "the Ombudsman shall see whether any person coming within his sphere of authority commits any faults or acts of negligence in the discharge of his duties." Article 3 of the Directives expands upon this broad statement of purpose, providing that the Ombudsman shall "keep himself informed as to whether any person within his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts of negligence in the discharge of his or her duties." To summarize, the Ombudsman exercises jurisdiction over any illegality on the part of the administration as well as having the responsibility to investigate

any discretionary decision said to be arbitrary or unreasonable.

The Ombudsman supervises the central government's civil and military administrations as well as local government administration. His authority includes Ministers, civil servants and all other persons acting in the service of the state. By way of qualification, his jurisdiction over Ministers is limited to the extent that they are exercising their functions as heads of government departments and not with respect to political decisions. Regarding local government, the Ombudsman's jurisdiction is restricted to those matters for which recourse may be had to a central government authority, and only in circumstances in which all administrative remedies have actually been exhausted. The activities of local government councils, acting as a body, are not within the Ombudsman's competence even if recourse may be had to the central government. In exceptional circumstances, cases falling within the latter category may be taken up on the Ombudsman's own initiative if a violation of "material legal interests" is brought into question. Excluded from the Ombudsman's jurisdiction are judges and the personnel of law courts and the work of Parliament and its Committees.

In consequence of the Ombudsman's jurisdiction over illegal acts committed by those within his aegis, he has the power to order the prosecuting authorities to institute criminal proceedings or alternatively to commence disciplinary action against a civil servant. If it is conduct on the part of a Minister or former Minister which he finds to be a breach of the civil law or the constitutional law, he can submit a recommendation in this regard to the Legal Committee of Parliament. In practice, we are told that the exercise of such powers by the Ombudsman are rare in the extreme, and in fact there has never been any recommendation go forward in the case of a Minister or former Minister. Rather, it

is the reporting of his conclusions vis-a-vis particular complaints that is the power exercised almost exclusively by the Ombudsman, and we were advised that to date the recommendations embodied in his decisions to the respective authorities are practically always acted upon. In addition, where it comes to the Ombudsman's attention that there are defects in the legislation, rules or administrative practices of either the central or local government, he will advise them accordingly.

Procedure

An investigation in the Ombudsman's office in Denmark commences either as a result of a complaint or on the Ombudsman's own initiative. Complaints may be made on behalf of another but in accordance with the Ombudsman's Directive as far as possible a complaint should be in writing. Anonymous complaints will not be accepted. Except in cases where the Ombudsman has acted on his own initiative, if a complaint concerns a decision which may be made the subject of appeal to a higher administrative authority, in practice the Ombudsman will decline to investigate the matter until any right of appeal has been exhausted. In such cases the Ombudsman will forward the complaint directly to the appropriate appeal authority and at the same time inform the complainant accordingly together with information concerning any further possibility of recourse. At this point it might be mentioned that if the Ombudsman's determination is that a matter is within the jurisdiction of the courts, he may recommend that free legal aid be provided to the complaining party. A complaint must be lodged with the office within one year of the action complained of although there is no time limit on the Ombudsman taking up matters on his own motion.

Investigations are conducted for the most part by correspondence, that is to say, information and records are requested of the administrative officials concerned, which may be followed up in a small proportion of cases by a personal attendance by a

representative of the Ombudsman's office. All in-coming complaints and investigations are supervised by Mr. Nielsen personally. We were advised by Mr. Nielsen that his staff is organized such that they are divided into four informal divisions, each of which specializes in a group of cases, as follows:

1. planning
 housing
 roads
 agriculture
 expropriation
 environment
2. social welfare
 health administration
 family matters
3. taxation
4. civil service personnel problems
 education
 prison administration
 police
 prosecuting authorities

General Observations

Mr. Nielsen has not adopted any organized procedure for communicating the function of his office to the public but he feels that the majority of the public are acquainted generally with the nature of the Ombudsman's office. He gave as his explanation for this familiarity on the part of the public the general wide coverage given the office by the Danish press. He indicated that there are approximately 49 newspapers in Denmark and on any given day as many as 5 might contain an article concerning the Ombudsman. This coverage is, of course, increased each September at the time of

the release of his annual report. Following upon the inspiration provided by Swedish legislation, Denmark enacted legislation concerning public access to documents in administrative files which has been in effect since January 1, 1971. Consistent with this policy the press have adopted the practice of calling the Ombudsman's office each week to ascertain which investigations have been completed during that week. Provided that Mr. Nielsen's report is finalized the press will be advised of all details concerning the investigation which may be published by them provided the names are kept secret. Mr. Nielsen also advises the press in the event that he initiates complaints of his own motion, and will keep them apprised as to the development of such investigations.

With respect to initiating investigations, we were advised by Mr. Nielsen that this is done quite commonly in Denmark. In particular, his staff scans the Danish newspapers for any items which it is felt should be made the subject of an investigation by the Ombudsman; in addition matters for investigation may arise out of inspections of institutions and in a number of cases inspections relating to local government administrations. Mr. Nielsen is quite active insofar as inspections are concerned and during the period made the subject of his 1975 report indicated that he inspected 3 central institutions for the mentally retarded and 13 local prisons.

There exists in Denmark a Legal Committee of the Folketing which also functions as a special Ombudsman Committee. Their principal function is not a concern for the Ombudsman, but rather to consider new legislation proposed by the Ministry of Justice. However, the Ombudsman forwards his reports on completed cases to the Committee on a regular basis during the year and the Committee performs the function of following-up on these reports. That is to say, it will on occasion call before it Ministers of the government for a "consultation" and request that the Ministers provide them with information as to action taken as a result of the

Ombudsman's report. The Committee is also charged with the function of considering the Ombudsman's annual report and drafting a motion thereon for presentation to the Folketing. The Ombudsman does not appear before the Committee personally to explain or in any way support his conclusions.

Regarding the Danish Ombudsman's jurisdiction over local administration, Mr. Nielsen termed this power a very desirable adjunct to his jurisdiction. He would even favour an extension of this jurisdiction and in this regard his views are similar to those of his predecessor, Professor Hurwitz, who is quoted in the McRuer Report to have stated that "if he had to start over again he would recommend the Ombudsman should have power to criticize all decisions by the State of local administrators, but not the courts."

FEDERAL REPUBLIC OF GERMANY

Name of Office	Petitions Committee of the Bundestag
Relevant Legislation	The Basic Law
Present Incumbent	Frau Liselotte Berger (Chairman)
Term of Office	4 years
Address of Office	53, Bonn-Bad Godesberg Bundeshaus Federal Republic of Germany
Population of Jurisdiction	60,000,000
Staff Complement	Committee - 27 persons Staff - 44 persons
Average Number of Complaints per Annum	Approximately 12,000

Descriptive Analysis

Any citizen in the Federal Republic of Germany has the right to ask the government to rectify a grievance where they have a complaint about either maladministration or the unjust operation of a particular law. The vehicle for the accomplishment of this remedial action is the Parliamentary Committee on Petitions, which was established by the Basic Law.

While this concept has features not unlike the traditional Ombudsman's function as it developed in the Scandinavian countries, it is different in certain respects. Indeed, when the powers of the Committee were to be expanded, the Scandinavian model was studied and rejected by the Committee of the German Bundestag that was set up to consider the question. Basically, the concept of an Ombudsman was found to be unsuited to the Federal Republic. The Committee found that the federal nature of the country militated against the introduction of a Federal Ombudsman. Moreover, the existing system of administrative courts, internal governmental control mechanisms, parliamentary control procedures and control through the mass media were thought to have the cumulative effect of providing the optimum degree of protection of the legal rights of the ordinary citizen. Hence, the Ombudsman concept was seen as being superfluous by the federal state, and each of the provinces with the exception of Rhineland-Pfalz.

The makeup of the Committee is interesting. The Committee of Petitions has 27 actual members with a support staff of some 44 persons. The 27 are all members of the Bundestag. Its basic function is to review administrative decisions and to make recommendations where there has been maladministration or to report to the Bundestag in cases where they find a law which requires amendment. The Committee is duplicated in each of the State Legislatures. The Committee assumes jurisdiction in all areas except those which refer to the Committees of Petitions in the various provinces. The Committee is empowered by the

Basic Law to investigate complaints, and in this capacity it has the power to request files from Ministries, make recommendations regarding the resolution of complaints against the administration and make recommendations to the Bundestag concerning laws which it believes operate unjustly.

Frau Berger is Chairman of the Committee and she is at the same time a member of the C.D.U., presently the opposition party. She represents a constituency in the City of Berlin. As its nature would imply, the Committee is very closely tied to the Bundestag, and this has its obvious advantages in terms of accessibility and a better opportunity to press for legislative reforms. In this respect, the Petitions Committee is fundamentally different from the traditional Ombudsman concept. The political nature of the chairmanship and the committee cannot but have an effect upon the Committee's ability to conduct impartial investigations.

Complaints and their Processing

Upon receipt of a written complaint to the Committee it is examined to determine whether it concerns an unjust law or the operation of the law. If it is found to be within the Committee's terms of reference, it will be given to one of three departments. These departments are roughly divided into the following areas: 1) labour, social affairs and cultural matters; 2) finance and economics; and, 3) legal matters.

Once this has been accomplished a lawyer and an expert from the department concerned will scrutinize the complaint. A letter is sent to the Ministry concerned asking for a report on the subject-matter of the complaint, and when this is received, the department expert will review it. If the report is considered

sufficient it will be passed on with the complaint to the Committee proper. Two committee members will consider it, and if they deem it sufficient, it will be presented to the Committee. If the two members do not agree as to whether the report is sufficient or if it raises matters which they feel should be discussed by the Committee (e.g. a law requiring change), this fact will be brought to the Committee's attention.

The Committee cannot force a vote in the Bundestag, but its recommendations are usually not turned down in individual cases, and recommendations to the Bundestag regarding changes in the law have been acted upon. We were told that voting in the Committee is not done along party lines.

FEDERAL REPUBLIC OF GERMANY - PARLIAMENTARY COMMISSIONER
FOR MILITARY AFFAIRS

Name of Office	The Parliamentary Commissioner for Military Affairs
Relevant Legislation	Basic Law, Article 45(b) Law on the Parliamentary Commissioner for Military Affairs in the Federal Republic of Germany, June 26, 1957. (Federal Law Gazette, Vol. 1, p.111).
Present Incumbent	Karl Wilhelm Berkhan (elected March 19, 1975). Mr. Berkhan was formerly Parliamentary State Secretary for the Defence Ministry.
Term of Office	5 years
Number of Persons Included Within Jurisdiction	495,000
Staff Complement	65 exclusive of the Parliamentary Commissioner
Average Number of Complaints per Annum	Approximately 7,500

Descriptive Analysis

This office was proposed in 1956 in conjunction with the work of the Defense Committee to strengthen parliamentary control of the armed forces and to ensure the protection of the civic rights of those serving in the forces. This latter ideal was part and parcel of the citizen-soldier concept, introduced to combat the unpopularity of service in the military. In keeping with the citizen-soldier concept it was considered essential to have open channels of complaint to someone other than officers of superior rank within the forces themselves.

The enacting legislation was not passed until 1957, and the first Parliamentary Commissioner did not take up his responsibilities until April 3, 1959, chiefly because the various parties within the Bundestag could not agree on a suitable candidate.

The Office in Germany was without precedent, and it was based largely on the model existing in Sweden. The Commissioner is a servant of the Bundestag, elected through a secret ballot by an absolute majority of its members (Article 13), and is appointed by the President of the Bundestag. Every German citizen is eligible for the position of Parliamentary Commissioner, provided he is at least 35 years of age, is entitled to vote in elections for the Bundestag, and he has served at least one year in the military service (Article 14).

The Commissioner's functions are outlined in Article 2 of the Act. He is required to look into matters referred to him by the Bundestag or the Defense Committee. The Article is worded in this way:

- (1) The Parliamentary Commissioner shall investigate specific matters on the instructions of the Bundestag or its Defense Committee. The Defense Committee may issue such instructions only in cases which are not dealt with by the Committee on its own account. The Parliamentary Commissioner shall on request submit a specific report on the outcome of his investigations.

(2) The Parliamentary Commissioner shall take action on the basis of a conscientious assessment of the facts whenever, in the exercise of the right conferred upon him under Article 3(4) of this Law, by information received from members of the Bundestag, complaints lodged by military personnel, or through other media, he becomes aware of circumstances which lead him to believe that there has been a breach of the soldiers' basic rights or an infringement of the principles of "Innere Führung". He shall inform the Bundestag of the outcome of his investigations either in a special report or within the scope of his annual report.

Section 2 of Article 2 would seem to give the Commissioner wide latitude to investigate. The section gives him authority to investigate of his own motion, and he can take action on the basis of a "conscientious assessment of the facts..." He can therefore act where he has reason to believe that there has been any breach of the soldiers' basic rights. This, it is submitted, implies a wide jurisdiction especially since the Act does not define the terminology used in Section 2 of Article 2, except by the broad principle termed "Innere Führung". This concept encompasses "the development and application of methods of modern leadership in the military field, the principles set forth in the laws, regulations, and rules of conduct governing the relations between superior and subordinate, the structure of the armed forces, and their integration into society."

Section 3(4) of Article 3 allows the Commissioner to visit any troops, headquarters, administrative agencies and establishments of the Federal Armed Forces without prior notice. The Commissioner can demand direct and uncensored reports from soldiers regarding their allegations, and he can seek out documents from their commanders. He can require complete access to information unless the matter falls within an area of public security. The Bundestag and its Defense Committee may issue general directives for the operation of the Parliamentary Commissioner.

Every soldier has a right to complain individually to the Parliamentary Commissioner, and the Commissioner estimated that 25% of his staff's time was spent in this type of individualized complaint. Of a staff of 65 persons, 12 are lawyers by profession. While the Commissioner acts as a bulwark against wrongful actions (of commanders) against soldiers in the armed forces and as their spokesman in the Bundestag, there is a larger question which comes to the fore. At what point does the constitutional authority of the Commissioner work against the order of military hierarchy and obedience necessary to maintain an effective defense force? The Commissioner's words are on point:

"I am referring to the permanent conflict between the sphere of personal freedom in the armed forces and the need to ensure their effectiveness through the principle of command and obedience and through the personal authority vested in superiors.

Although my constitutional mandate relates primarily to the protection of the sphere of personal freedom in the armed forces - or in other words to the protection of the rights of the "citizen in uniform" - the fact that this sphere of personal freedom is necessarily subject to restrictions must not be overlooked. In addition, problems that may lend themselves to an easy solution in the individual case must be viewed against the background of their possible wider implications. If I regard it as my duty not only to protect the rights of the individual in the armed forces, but also to represent the armed forces' interests in the parliamentary sphere, I am bound to give consideration to the overall interests of the armed forces whenever I have to deal with a specific case. The cooperation and conformity of views thus achieved will in the end also benefit the interest of the individual."

FEDERAL REPUBLIC OF GERMANY - STATE OF
RHINELAND - PFALZ

Name of Office	The Citizen's Representative
Relevant Legislation	Provincial Law concerning the Citizen's Representative (May 3, 1974)
Present Incumbent	Dr. Johannes B. Roesler (elected May 17, 1974). Dr. Roesler was formerly chairman of the Petitions Committee for Rhineland - Pfalz.
Term of Office	8 years
Address of Office	65 Mainz, Landtag, Postfach 3040 Federal Republic of Germany
Population of Jurisdiction	3,671,190
Staff Complement	10 exclusive of the Citizen's Representative
Average Number of Complaints per Annum	Approximately 2,300

Descriptive Analysis

The office of the Citizen's Representative came into being in this state on May 17, 1974, and on that day the present Citizen's Representative was sworn in. Section 9 of the legislation requires that the Citizen's Representative must be elected by a majority of the Landtag (Provincial Parliament), and the vote must be secret. The law provides for an eight-year term of office and the Citizen's Representative may be re-elected. As noted by Bernard Frank, the office is unique in that Dr. Roesler is the permanent Commissioner of the Petitions Committee for Rhineland-Pfalz and accordingly petitions to the Provincial Assembly as well as those to the Citizen's Representative came under his consideration.

The Citizen's Representative is required by Paragraph 2 of the legislation to entertain complaints in writing or verbally, and there is a requirement with respect to the confidentiality of correspondence to the Citizen's Representative from those whose liberty is denied or restricted by the State. The relevant section, after translation, requires that:

- (1) Every person has the right to apply directly to the Citizen's Representative either in writing or verbally, who, for his part, accepts these petitions for the provincial parliament.
- (2) If a person is deprived of his liberty or his liberty is restricted, the petition shall be transmitted to the Citizen's Representative uncensored and in a sealed envelope.

Paragraph 1 of the legislation lays down the duties of the Citizen's Representative. It reads:

- (1) It is the duty of the Citizen's Representative to assist the citizen vis-a-vis the authorities within the frame of the parliamentary right of control of the provincial parliament.

- (2) According to his mandate, the Citizen's Representative has to take action if there is sufficient reason to believe - through complaints addressed to the provincial parliament or to the office of the Citizen's Representative or through some other means - that authorities which have to account to the provincial parliament have illegally or inappropriately dealt with matters involving citizens.

The Citizen's Representative is empowered to undertake investigations of his own motion.

The Citizen's Representative's jurisdiction is restricted in five areas: by Paragraph 3, Section 1, he is precluded from investigation where:

- (a) the provincial authority has no authority to take legal action.
- (b) an investigation would interfere with a pending legal proceeding or would mean an appeal of a legal judgment.

This does not affect the right of the Citizen's Representative to investigate the actions of the authorities mentioned in Paragraph one, Section 2, if these authorities are involved in a pending legal proceedings or after the termination of a proceeding.

- (c) if it involves a valid terminated legal proceeding and its investigation would mean a resumption of the proceeding or an amendment of the decisions taken by a judge.
- (d) if it is a matter which is the object of an inquiry held by an attorney-general. However, the legal investigation is allowed if the reason for the petition is a 'lengthy inquiry'. (i.e. delay).

- (e) if the complaint is or was the object of an investigation according to article 91 of the provincial constitution.

Though he is restricted in these five areas, the Citizen's Representative is still given a wide latitude if regard is had to the proviso following Section 1(b) of Paragraph 3, above set out. Likewise, see the proviso in Section 1(d) of Paragraph 3.

Paragraph 5 of the Act delineates the duties of the Citizen's Representative and the government authority with respect to the carrying out of an investigation. Five basic guidelines are set out:

- (1) The Citizen's Representative must give the competent authority the opportunity to settle a matter. He must strive for an amicable settlement of the matter. For this purpose he can give a substantiated recommendation, a copy of which has to be addressed to the relevant Minister. The Citizen's Representative will inform his office about the matters settled on good terms at the next meeting of his committee.
- (2) The competent authority should inform the Citizen's Representative within reasonable time or on demand about the measures taken, the continuation or the result of the procedure.
- (3) If an amicable settlement cannot be reached, the Citizen's Representative must present the matter to his committee and propose the measures to be taken. Before making a final decision, the committee may ask the Citizen's Representative to make supplementary inquiries.
- (4) The Citizen's Representative may reject measures according to Section 1, if the matter or the legal situation is such that the matter is one for the Courts to decide (Paragraph 3, Section 3).
- (5) The Citizen's Representative is required to inform the citizen in writing of the manner in which the matter has been settled.

FIJI

Name of Office	The Ombudsman
Relevant Legislation	Constitution of Fiji Ombudsman Act, 1970
Present Incumbent	Justice Moti Tikaram (reappointed to a second term in 1976). Justice Tikaram is seconded from his duties as a puisne judge of the Supreme Court of Fiji
Term of Office	4 years
Address of Office	Suite 104, Fiji Department Bank Centre, Victoria Parade, Suva, Fiji
Population of Jurisdiction	559,813
Staff Complement	10 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 450

Descriptive Analysis

Fiji, a former British Colony, became independent on October 10, 1970. Her Majesty Queen Elizabeth II is the head of State, her local representative being the Governor-General. The Constitution provides for an elected House of Representatives of 52 members and a Senate of 22 members; 8 appointed by the Great Council of Chiefs, 7 by the Prime Minister, 6 by the Leader of the Opposition and 1 by the Council of Rotuma. The Prime Minister and the Leader of the Opposition are appointed by the Governor-General who also appoints Government Ministers but on the advice of the Prime Minister.

The jurisdiction is unique in terms of its geographical makeup. The Fiji archipelago consisting of 845 islands spread over an area of 7,055 square miles. It is a multi-racial country but the two major peoples are the Fijians and the Indians, and the official language is English. The bulk of Fiji's population resides on two main islands; Vitilevu and Vanualevu.

The main provisions relating to the office of the Ombudsman are contained in Sections 112-118 of the Constitution. Subsidiary legislation is contained in the Ombudsman Act, 1970 which was passed and given Royal Assent on December 22, 1970. Justice Tikaram was first appointed on March 1, 1972 and he officially commenced the functions of the office on July 31, 1972.

Section 112(2) of the Constitution provides that the Ombudsman is to be appointed by the Governor-General after he consults with the Prime Minister, the Leader of the Opposition, "and such other persons, if any, as appear to the Governor-General, acting in his own deliberate judgment, to be leaders of parties in the House of Representatives". In theory, then the Ombudsman is responsible to the Governor-General and presumably could be removed from office by the Governor-General. In practice, however, the Ombudsman considers himself to be the servant of the Legislature.

Mr. Justice Tikaram's staff is appointed subject to the Public Service Commission. The staff of the Ombudsman includes both Fijians and Hindustani interpreters, and in cases where it is apparent the complainant does not have command of the English language, the office will answer and deal with the complaint in the language that is most appropriate.

The very size of the jurisdiction poses serious problems as far as the Ombudsman's accessibility is concerned. Some of the outlying islands are very sparsely populated and are vast distances from the main islands where the seat of government is located. Despite this, the Ombudsman is of the opinion that branch offices are not required. He does make periodic visits to some of the more outlying islands, and when this is done advertisements are placed in the local press in the language of the region.

The Ombudsman's general jurisdiction is laid out in S.113(1) of the Constitution. It provides as follows:

113(1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority...

This basic jurisdiction is circumscribed by S.113(2)(e) which is as follows:

- (e) ...provided that it shall not apply in relation to any of the following officers and authorities -
1. the Governor-General or his personal staff;
 2. any Commission established by this Constitution or the staff of any such Commission;

3. any other person or authority insofar as that person or authority exercises power to make appointments to officers in the public service, disciplinary control over or power to remove persons holding or acting in such offices, power to grant, withhold, reduce in amount or suspend pension benefits in respect of service as public officers or powers in respect of similar matters affecting public officers;
4. The Director of Public Prosecutions or any person acting in accordance with his instruction.

By Section 113(2) the Ombudsman's authority to investigate extends to:

- (a) any department of the Government or officer or such;
- (b) the Police Force or any member thereof;
- (c) Fiji Prisons Service and other services controlled by the Government;
- (d) any authority empowered to determine the person with whom any contract or class of contract is to be entered into by or on behalf of the Government or any such officer or authority;
- (e) such other officers or authorities as may be prescribed by Parliament.

Section 113(6) provides that no investigation will be commenced if a right of appeal lies unless it would be unreasonable to expect the complainant to avail himself of the said remedy or if the provisions of Chapter II of the Constitution have been contravened.

The Ombudsman is precluded from investigating matters against boards and statutory bodies. This has been a source of frustration to the Ombudsman and he has pressed for the extension of his legislation ambit to cover this area. Likewise, he has

advocated the amplification of his authority to include the actions of minsters. The Ombudsman would, in addition, like to have the legislative authority to initiate inspections of his own motion. The Constitution and the Ombudsman Act, 1970 make no provision for this latter power.

The obligation to report annually is contained in Section 117(3) of the Constitution. On the question of reporting his activities, Justice Tikaram had the following to say at page 28 of his second Annual Report:

The means presently available to the Ombudsman to properly make known to the public suitable cases are very restricted. A number of countries have empowered their Ombudsman to publish reports from time to time in the public interest of any person or department whether or not the matter is to be dealt with in such reports have been the subject of the report to Parliament or are to be contained in the Annual Report. Such a provision in Fiji will serve a very useful purpose.

Justice Tikaram remained vocal on the subject during the third year of his operation and his third Annual Report contains the following excerpt from an editorial in the Fiji Times:

Fiji's outspoken Ombudsman, Mr. Justice Tikaram has now urged loudly, clearly and publicly what he has been advocating privately for some time - the right to use his discretion to report important cases of maladministration publicly, and as they happen...

He is aware that publicity given to selected cases would have a two-fold effect. First, it would make the community continually aware of his role and encourage people to consult him more often if they felt they had been badly treated. Second, it would be a periodic reminder to the administration that the work of the Ombudsman is a continuing and publicly known task - not simply

something which is summarized every year in a parliamentary report in which their failings, when they occur, can be easily overlooked in what is a general review of the year's work.

Complaints and their Processing

All complaints coming to the Ombudsman must be in writing and they are required to be submitted directly to him. The Ombudsman's staff will assist a complainant in putting his complaint in writing if it appears that such assistance is required. Interestingly, about 50% of the complaints that come to the office are reduced to written form by the Ombudsman's staff. The Ombudsman indicated that this procedure consumes a considerable amount of time.

As a complaint reaches the office it is numbered and entered in a master register which contains the pertinent details concerning the complaint. As action is taken on the complaint it is recorded in the register. The Ombudsman examines every complaint that arrives in the office and every letter leaving the office is signed by him. Once the question of jurisdiction is determined, a copy of the complaint is sent to the department concerned, unless the wording of the complaint is inflammatory, in which case it is summarized and then sent to the department. Upon receipt of the department's report, the investigator will send a copy of it to the complainant for his comments. If a discrepancy arises as to the facts as reported by the department, the investigator will attend at the government office and examine the file personally. After this stage the investigator will make a recommendation to the Ombudsman with respect to the appropriate disposition of the matter. The Ombudsman is charged with the burden of making all final decisions as to whether a complaint is justified or not, and whether and what further action will be taken on a complaint.

FINLAND

Name of Office	The Parliamentary Ombudsman
Relevant Legislation	The office was established by the Constitution Act of 1919. Additional statutory provisions are contained in the Instructions approved in 1919 and the Parliament Act of 1928 as well as amendments to the Constitution Act and Instructions in 1971.
Present Incumbent	Dr. Jorma S. Aalto (re-elected in 1977).
Term of Office	4 years
Address of Office	Eduskuntakatu 4 00100 Helsinki 10 Finland
Population of Jurisdiction	4,600,000
Staff Complement	17 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 2,000

Descriptive Analysis

The Constitution Act of 1919 provides for two "Guardians of the Law" who are charged with the responsibility of supervising and controlling the functioning of the Finnish administration. One of these officials is the Chancellor of Justice, the other the Parliamentary Ombudsman. The Chancellor of Justice is required to check that the officials and agencies of government uphold the law and fulfil their responsibilities in a manner that no person has his or her legal rights violated. He is in addition the head of the public prosecutors and gives legal advice to the Council of State. Because the Chancellor of Justice is so inextricably identified with the executive the office of the Parliamentary Ombudsman was created to allow for an independent officer of Parliament to check on the legality of the functioning of government agencies and officials.

The office of the Parliamentary Ombudsman in Finland was modelled on that of the Ombudsman in Sweden. The Parliamentary Ombudsman is elected by Parliament for a term of four years, which term does not coincide with the statutory four year duration of the Parliament. The office is independent of Parliament, the executive and the administration. The Parliamentary Ombudsman appoints and dismisses the staff of his office and decides upon their duties.

The function of the Parliamentary Ombudsman as specified in the Constitution Act is to "supervise the observance of the laws in the proceedings of courts and other authorities". All of the public administration is therefore within the Parliamentary Ombudsman's jurisdiction, the greatest part of which is comprised of the public services. Local government in Finland is based on municipal self government and the municipal services have always been in the Parliamentary Ombudsman's field of action, as well as the Finnish ecclesiastical and other organizations performing administrative services. The independence of the courts of law

is sanctioned by the Constitution and confirmed by long tradition. Judges cannot be dismissed from their office except by way of a court resolution. However the courts of law are subject to the Parliamentary Ombudsman's surveillance, as are the actions by the Government and its ministries.

The Parliamentary Ombudsman is particularly active in the area of inspections. During 1977 the Parliamentary Ombudsman devoted 67 work-days to inspections with staff lawyers expending another 119 days. In all 167 separate institutions were examined by the Ombudsman or members of his staff. The usual targets of such investigations are penitentiaries, military units, police stations, mental hospitals, courts and government agencies including municipal offices. There is no established programme for these inspections; no information is given in advance and the agency only learns of the inspection at the time of the arrival of the Parliamentary Ombudsman. In the past several years the Ombudsman has arranged for inspection trips during which members of the public are invited to attend and the office's function will be explained; following this meeting an opportunity is allowed for the public to meet the Parliamentary Ombudsman.

The Parliamentary Ombudsman has the authority to bring legal actions against public officials. He can initiate the prosecutions in court himself, or can order the Public Prosecutor to bring the action, the latter step being more frequently taken. The number of charges brought up by the Ombudsman is rather small and the diminishing trend in this respect is similar to that in Sweden. Where in the Ombudsman's opinion an offence committed by an administrative functionary does not give cause for legal action but is still too serious to be settled through a mere corrective reminder, he may order disciplinary action against the offender. Such action is taken by the administrative agency concerned in accordance with established administrative regulations. The claim for disciplinary punishment in these cases is introduced by a Prosecutor appointed to the agency for this purpose. The Ombudsman has ordered proceedings for disciplinary action only

rarely, and some years have passed without a single case being handled in this manner. In the majority of complaints received the Ombudsman, having found that an agency or an official has violated the law or otherwise acted improperly, issues a formal "reminder" to the offender in question, or according to the nature of the case, to the offender's superiors. It is to be noted that as decisions of the Ombudsman are not legally binding the complainant may renew his complaint to the Ombudsman. Such cases have occurred and in some of them the Ombudsman has on the basis of additional information and new evidence taken action on the second petition.

The third important field of operation of the Parliamentary Ombudsman is in relation to his evaluation of gaps in the legislative framework and inequities or contradictions in administrative practice. In his annual report the Parliamentary Ombudsman is required to report upon those areas which have come to his attention regarding deficiencies in the laws and regulations. In the past the Ombudsman has drawn to the attention of Parliament provisions which have occasioned ambiguous interpretations or difficulties in implementation and made recommendations for their elimination.

FRANCE

Name of Office	Le Médiateur
Relevant Legislation	Law No. 73-6 of January 3, 1973 Law No. 76-1211 of December 24, 1976
Present Incumbent	M. Aimé Paquet (appointed in June, 1974). M. Paquet was a former Deputy in the National Assembly.
Term of Office	6 years
Address of Office	23, Rue Auguste Vacquerie Paris 16 France
Population of Jurisdiction	50 million
Staff Complement	30
Average Number of Complaints per Annum	Approximately 3,500

The Médiateur, chosen by Government Order-in-Council, is authorized to investigate all complaints concerning administrative bodies whose activities directly concern members of the public. Complaints may be made by individuals and groups (in certain instances), but, importantly, must be directed to the Médiateur's attention by either a Deputy or a Senator. Within the limits of his authority, the Médiateur is not bound to receive instructions from any body. He has full legal immunity for the opinions he expresses or the acts he carries out in the course of his duties. The expenses of his office are included in the General Budget as part of the 'Prime Minister's Receipts and Expenditures'. They are held in a special account which is presented annually to the Cours des Comptes (State Audit Office). The funds are not subject to the ordinary administrative controls over government expenditure. The Médiateur is entitled to appoint the members of his own staff, who are to serve only so long as the Médiateur who appoints them. If civil servants are chosen, they must resign from the civil service, but may be re-appointed with appropriate seniority within the service after their term of office. The Médiateur himself can only be removed from his position in the event of a 'bar' from office. The conditions governing such a 'bar' are to be determined unanimously by a special body composed of the Vice-President of the Conseil d'Etat (Council of State: the highest administrative authority and advisory body to the Government in matters of legislation), the first Presidents of the Cour de Cassation (the Supreme Court of Appeal), and the Cour des Comptes. Only the President of the Republic is entitled to refer such a matter to this body.

Nearly the whole of the central and local Government is within the jurisdiction of the Médiateur. He does not, however, have authority to mediate disputes between civil servants, nor does his sphere of supervision cover the military. The Médiateur may not intervene in proceedings instituted before a court of law, nor may he call into question the merits of a judicial decision.

The Law of January 3, 1973 states the general principle that "Ministers and all public authorities must facilitate the work

of the Médiateur". The Mediateur may put questions to the civil servants or request an interview with them. He may also ask the 'corps de contrôle' (audit and inspection body) to carry out checks and conduct inquiries. However it falls to the appropriate Minister to authorize civil servants to answer questions, to attend interviews, or to direct the 'corps de contrôle' to make checks and inquiries. Thus Ministers may refuse such authorization. At the request of the Médiateur, Ministers and competent authorities must produce "any document or file connected with the case he is inquiring into". Nevertheless the authority is not obliged to comply with the Médiateur's request if the authority feels that this particular document or file is not connected, or not sufficiently connected, with the case he is inquiring into. Communication of a file or document to the Médiateur may also be refused should the competent Minister or agency feel such communication would disclose secret matters relating to National Defence, the safety of the State, or foreign policy. This is not to say that these matters are outside the Médiateur's jurisdiction; he lacks the authority to investigate only those matters judged by officials to be secret.

When a complaint (which may be referred on behalf of foreigners and citizens) seems to the Médiateur to be justified, he may make any recommendation which he thinks will settle the difficulties referred to him and, if necessary, he may make any proposals he thinks might improve the functioning of the body concerned. His recommendations are in no way binding on the administration. Some powers are given to the Médiateur in case he thinks his recommendations or proposals are not being respected. First, the administration is obliged to inform the Mediateur of the results of his intervention. Secondly, the Médiateur may specify a period within which a satisfactory answer must be given. If the Mediateur does not receive what he feels is a satisfactory answer, he may make his recommendation public in the form of a special report published and presented to the President of the Republic and to Parliament. The administrative body involved may also publish an answer, and, if necessary, the action it had taken in response to the recommen-

dations of the Médiateur. There is one restriction on these published exchanges, namely, that the Médiateur must see to it that "no mention permitting the identification of the persons whose names may thus be revealed to him is made in the documents published under his authority".

The Médiateur may, in the event of the competent body failing to do so, initiate disciplinary proceedings within the civil service against the responsible civil servant, or bring him before the criminal courts. This power is not to decide the disciplinary or penal sanction, but merely to initiate the proceedings. Finally, the Médiateur has no obligation to give any information to the Member of Parliament who forwarded the case to him, and if the Member receives no reply from the Médiateur, he has no remedy. Still it must be noted that Members of Parliament and Deputies are the Médiateur's only source of complaints, for the Médiateur is not empowered to take up a case on his own initiative.

The Médiateur is obliged once a year to lay before Parliament a "general report on the performance of his functions". The annual report is also presented to the President of the Republic, and published for the purpose of distribution to interested parties. Special reports are only permitted where the administration's response to the recommendations of the Médiateur is felt by the Médiateur to be unsatisfactory.

One interesting point to observe regarding the organization of the Médiateur's office is that he has a 'contact' or 'correspondent' within each Ministry. His duty is to oversee all matters concerning complaints about his Ministry which are referred to the Médiateur. This official is still an employee of the Ministry, and receives no remuneration from the Médiateur.

GREAT BRITAIN

Name of Office	Parliamentary Commissioner for Administration
Relevant Legislation	Parliamentary Commissioner Act 1967
Present Incumbent	Cecil Montacute Clothier, Q.C.
Term of Office	Life (mandatory retirement at age 65)
Address of Office	Church House, Great Smith Street, London, SW1P 3BW, England
Population of Jurisdiction	57 million
Staff Complement	56 exclusive of the Parliamentary Commissioner
Average Number of Complaints per Annum	Approximately 1,000

Descriptive Analysis

Interest in the institution of Ombudsman began to rise in the late 1950's when the Observer invited the Danish Ombudsman to visit Britain. In 1964 the Labour Party included the establishment of such an office in its election platform and on April 1, 1967 the first Parliamentary Commissioner for Administration, Sir Edmund Compton, took up his duties. The office in Britain was tailored to fit the particular parliamentary traditions which had grown up in that country over the preceding centuries. In furtherance of this ideal the craftsmen of the new office sought to model it on the office of Parliament's Comptroller and Auditor General who had traditionally reported to the Public Accounts Committee and who had at all times worked closely with that Committee. This office had been legislatively attached to and had become part of the British Parliamentary fabric more than one hundred years before the establishment of the Parliamentary Commissioner's office. Sir Edmund Compton, before he was appointed as Parliamentary Commissioner, had been for eight years the Comptroller and Auditor General for Parliament. Thus, at the outset we see the analogy forming between the Auditor General and his Public Accounts Committee and the Parliamentary Commissioner and his Select Committee.

The Parliamentary Commissioner serves a population of approximately 57 million people and he has a staff of 56 persons to aid him in his tasks. Incidentally, the Commissioner has no lawyers on his staff and of this number of 56 persons 30 are Investigators.

The Commissioner's jurisdiction to investigate is delineated in Section 5(1) of The Act wherein it is stated:

5. (1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where --

- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
- (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.

The word "maladministration" is a key to determining the Commissioner's jurisdiction. The first Commissioner, Sir Edmund Compton, has defined it to mean "the administrative processes attendant on the discretionary decision". By Section 12, the word "action" includes a failure to act, and other expressions connoting action. Section 5(1)(a) makes provision for a written complaint to be submitted to a Member of Parliament before it can be received by the Commissioner. This is in keeping with the British principle that Parliament is the proper forum for the airing of grievances of citizens. The Parliamentary Commissioner in Great Britain was created to assist Members of Parliament in unearthing and resolving grievances against the administration. The Commissioner's role was to be one in which the Members of Parliament should be kept to the fore and the Commissioner's office was to assume a low-profile in its investigations and activities. Indicative of this concept is the fact that the Commissioner is precluded from initiating complaints of his motion.

Section 4(1) indicates those government departments and authorities over which the Commissioner will have jurisdiction. Generally, he will have jurisdiction over those government departments and authorities listed in Schedule 2 which is appended to the Act. The same Schedule contains a number of explanatory notes which gives further definition to those agencies over which the Commissioner will have authority.

By Order in Council it is possible to amend Schedule 2 so as to include, exclude or alter any entry or note in the Schedule thus affecting a change in the Commissioner's jurisdiction.

The Commissioner is empowered to intervene in cases where the aggrieved person has or had a right of remedy or review but only in those instances where he is of the view that it would be or would have been unreasonable to expect the aggrieved person to have availed himself of any available remedial channels. The subsection reads as follows:

5(2) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say --

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

The Commissioner is specifically precluded from entertaining complaints in respect of those matters set out in Schedule 3 of the Act. Some of the matters indicated therein relate to action taken by the Secretary of State for the purposes of investigating crime or of protecting the State, including action

relating to passports; the commencement or conduct of civil or criminal proceedings before any court of law; any exercise of the prerogative of mercy; action taken on behalf of the Minister of Health or the Secretary of State by a Regional Hospital Board, Board of Governors of a Teaching Hospital or the grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.

Under Section 9 any obstruction of the Commissioner or a member of his staff in the performance of his duties may be treated as a contempt of the High Court and may be certified to the Court. The Court, upon hearing the matter, may deal with the person charged in any manner in which it could have dealt with him if he had committed the offence before the High Court itself. The Commissioner has no jurisdiction over local authorities, or nationalized industries or the Police. The Commissioner has no express authority to enter premises in furtherance of an investigation, although such power has been implied. There is no legislative or implied authority to inspect government buildings simply as part of a general inspection program and not in pursuance of any announced investigation.

The Commissioner is also precluded from looking into matters concerning the military forces of the United Kingdom or from investigating any matter relating to military discipline.

Once the Commissioner has conducted an investigation he is, by Section 10(1), required to submit a report of his investigation to the Member of the House who sent the matter to him requesting an investigation. He is empowered to lay special reports before the House concerning any matter in which he feels an injustice has been committed and remains unrectified. Additionally, he is required by Section 10(4) to lay before the House a general report on the performance of his functions, and in the same subsection he is authorized to lay such other reports

before the both Houses as he considers necessary. In this regard, the Commissioner is now making it his practice to submit reports to Parliament every three months.

Complaints and their Processing

Once a complaint has been passed to the Parliamentary Commissioner by a Member of Parliament the Commissioner's staff will make a determination regarding jurisdiction of the Commissioner to investigate. If the Commissioner cannot immediately decide whether a matter is within or without his jurisdiction he will proceed as if it were, until it is demonstrated that the case is without his legislative ambit. The Commissioner will dispatch a letter to the Principal Secretary or other most senior member of the department involved and the letter will contain a statement of the complaint. A reply is invited within 14 days.

Many cases can be resolved at this initial stage of investigation but if this is not possible then a further investigation may take place and this can take the form of further correspondence with the department involved, examination of departmental papers, informal discussions with departmental officers, further discussions or oral evidence with the person complained against and formal enquiry.

Upon completion of his investigation the Parliamentary Commissioner will draw up his report of the matter. If any person or department is to be adversely affected by a report, he or it must be given the opportunity to reply to the Commissioner's position. The report will be sent to the Member who initiated the complaint and a copy of it will go out to the Principal officer of the Department involved.

There are two aspects of the Parliament Commissioner's office in the United Kingdom which have effectively set it apart.

One of them is the requirement that all complaints go through a Member of the House of Commons and the other is the Select Committee concept. The Committee was established as a Committee of Parliament whose duty it was and is to "receive and consider the Reports of the Parliamentary Commissioner". The underlying principle guiding the workings of the Committee is that "it is not a quasi court of appeal from the decisions of the Parliamentary Commissioner for Administration and his conclusions are accepted as the Committee's jumping off point".

The Committee was established in November, 1967 and its terms of reference were:

"...to examine the reports laid before the House by the Parliamentary Commissioner for Administration, and matters in connection therewith".

The Committee draws its membership from all parties of the House and has never sought the services of anyone to act as Committee Counsel.

The Committee will usually hear the Commissioner who will highlight areas of his report and answer questions put to him and it will then examine specific Ministers or Permanent Secretaries of the Departments of Government. The Committee's function is to inform the House of the matters it has looked into after it has thoroughly and impartially examined the subject matter under review. In practice, however, the Commissioner has provided the Committee with the basic data with which it will work and he suggests possible areas of concern which it might want to consider. It can either accept or reject his views concerning particular matters under study.

Although the Committee's function was at first unclear, it was not long before its Chairman enunciated its job in relation to the performance of the Commissioner's duties. The

Chairman stated that the Committee was to concern itself with:

- (a) remedy to the aggrieved person, particularly in the case of "special" reports made under Section 10(3) of the Act, where the Commissioner found that injustice caused by maladministration had not been, or would not be remedied;
- (b) the nature of any defect in a Department's administration systems revealed by the Commissioner's investigation, and the measures taken by the Department concerned to remedy that defect; and
- (c) the adequacy of the Commissioner's powers for the performance of his functions.

A study of the Committee's work reveals that it has, indeed, involved itself in the three areas above set out and it has even sought to assist the Commissioner in questions of jurisdiction (e.g. the question as to the Commissioner's authority to deal with complaints against the Metropolitan Police Force. The Commissioner thought he had no such authority and the Committee, after reviewing the question, agreed). It has also assisted him in his interpretation of the word "maladministration" around which his function revolves. The Committee has taken a close and extremely active part in guiding and bringing the Commissioner's office to the fore.

The Parliamentary Commissioners in the United Kingdom have been laudatory of the Select Committee's effect upon the efficient operation of the Commissioner's office. Chiefly, the Committee "allows and can sometimes guarantee examination and debate of issues raised by the Commissioner either in connection with individual cases or with respect to his authority generally...". The Committee has also acted as a liaison between the Commissioner and the House of Commons and finally the Committee's hearings allow for a continuing dialogue between Members of the House, the Civil Service and the Commissioner.

INDIA: STATE OF BIHAR

Name of Office	Lokayukta
Relevant Legislation	Bihar Lokayukta Act, 1973 (office operational May, 1973) Rules promulgated 1974
Present Incumbent	Dr. S.V. Sohoni (appointed May 28, 1973). Dr. Sohoni was a former Civil Servant.
Term of Office	5 years
Address of Office,	4, Circular Road Patna - 800001 India
Population of Jurisdiction	60,000,000 (approximately)
Staff Complement	20 exclusive of the Lokayukta
Average Number of Complaints per Annum	Approximately 2,000

Descriptive Analysis:

The establishing Legislation enables the Lokayukta (there is no provision for an Upa-Lokayukta) to "investigate any action which is taken by, or with the general or specific approval of (i) a Minister or Secretary; or (ii) any other public servant" (Section 7). He is forbidden however, from inquiring into:

- (1) (a) action taken for the purpose of investigating crime or protecting the security of the State;
- (b) action taken in the exercise of powers in relation to determining whether a matter shall go to court or not;
- (c) action taken in matters which arise out of the terms of a contract;
- (d) action taken in respect of matters relating to conditions of service of public servants;
- (e) grant of honours and awards; and,
- (2) if the complaintant has or had any remedy by way of proceedings before any court of law or tribunal (Section 8).

Strict provision is made for the confidentiality of investigations. Even though the Lokayukta may conduct an inquiry "relating to a matter of public importance, in public," he is not permitted to disclose the names of the persons involved (Section 10). In keeping with these provisions, Section 9(3) of the Act stipulates that "any letter written to the Lokayukta by a person in police custody or in a gaol or in any asylum...shall be forwarded to the addressee unopened".

The Lokayukta is appointed by the Governor, although this power was challenged after the appointment of Dr. Sohoni in 1973.

Under Section 12(5), if the Lokayukta is unsatisfied with the results of his investigation "and if he considers the case so deserves, he may make a special report to the Governor". In addition, the Governor may "confer on the Lokayukta...additional functions in relation to the redress of grievances and the eradication of corruption...powers of a supervisory nature over agencies" or he may "require the Lokayukta to investigate any action" (Section 17).

In a manner similar to the Maharashtra Act, the Bihar Legislation indicates the function of Lokayukta to be different from that of a more traditional Ombudsman. The terminology of the Act again refers to specific public servants and their maladministration or actual wrongdoing, rather than governmental agencies and more general administrative error.

Complaints and their Processing:

Despite the similarities in the Legislation of Bihar and Maharashtra, Dr. Sohoni's view of the Lokayukta after one year's experience in Bihar, as evidenced in his first Annual Report, is significantly different from that of Mr. Kotval's in Maharashtra. Little time is spent in the discussion of grievance-handling during the year or the governmental reaction to the office. Rather, Dr. Sohoni concentrates on the conduct of the various government departments and officials. Proposed Codes of Behaviour for public servants and the text of a questionnaire on "Points of Control and Supervision" are reproduced with a view to improving the "quality of the administrative sector" (Annual Report, 1973, pp 11-29).

Several recommendations for specific reform are then discussed. These range from a proposal to issue "definite instructions "to those in doubt about the collection of a profession tax, to a suggestion that "the state Government be pleased to obtain proposals for the improvement of...the campaign against adulteration of food" (pp 30-3). The only recommendations made with reference to the Lokayukta's jurisdiction indicated Dr. Sohoni's

concern that it was too extensive: he suggested that both the State University Service Commission and "non-judicial personnel in judicial establishments" be removed from his purview.

Dr. Sohoni perceives the chief function of the office to be an influence on "the factor of co-operation" demanded not by the wording but by "the ethos of the Act". By avoiding an adversary posture, the "secret of administrative success, lying in the interstices of procedure" may be probed (Annual Report, p. 48).

INDIA: STATE OF MAHARASHTRA

Name of Office	Lokayukta
Relevant Legislation	Central Lokpal and Lokayuktas Bill, 1968 (this federal legislation provided the basis for the various state bills) Maharashtra Lokayukta and Upa-Lokayukta Act, 1971. (Office operational 1972).
Present Incumbent	A.R. Shimpi (appointed January 2, 1978)
Term of Office	5 years
Address of Office	A-4 Madame Cama Road Opp. Sachivalaya Bombay 32 India
Population of Jurisdiction	60,000,000 (approximately)
Staff Complement	48 exclusive of the Lokayukta
Average Number of Complaints per Annum	Approximately 1,300

Descriptive Analysis:

The Maharashtra Lokayukta and Upa-Lokayukta Act, 1971, authorizes the Lokayukta, or Indian Ombudsman, to "investigate any action which is taken by, or with the general or specific approval of (i) a Minister or Secretary; or (ii) any public servant..." (Section 7). There are, however, many restrictions in the Legislation that limit the scope of the Ombudsman and his Deputy (the position of the Upa-Lokukta is only approximately that of a Deputy: certain areas of the jurisdiction are given specifically to him rather than the Lokayukta, although under another section of the Act the Lokayukta may assume any of his Deputy's powers if he so wishes). The principal limitations on the Lokayukta's investigative powers are contained in Section 8 of the Act; under this section he is forbidden from inquiring into:

- (1) (a) action taken for the purpose of investigating crime or protecting the security of the State;
- (b) action taken in the exercise of powers in relation to determining whether a matter shall go to court or not;
- (c) action taken in matters which arise out of errors of a contract;
- (d) action taken of matters relating to conditions of service of public servants;
- (e) grant of honours and awards; and,
- (2) if the complainant has or had any remedy by way of proceedings before any court of law or tribunal.

During the course of an investigation, the Lokayukta, like any other Ombudsman-like official, has the power to conduct private hearings and request officials to produce documents. He may also "conduct any investigation relating to a matter of definite public importance in public", though the names of the persons involved "shall not be disclosed to the public or press" (Section 10). Moreover, if the Lokayukta is not satisfied with the results of his investigation, "and if he considers the case so deserves, he may make a special report upon the case to the Governor" (Section 12). The Governor then determines the course of future action--it is within his power to "confer additional functions on the Lokayukta...in relation to the redress of grievances" (Section 17).

The role of the Lokayukta, as envisaged in the initial Legislation, is not completely consonant with that of a classical Ombudsman. There is no reference made to a generalized improvement of the administrative process. The terms "official" or "public servant" are used rather than "agency": under Section 10(1) of the Act, for example, the Lokayukta:

- (a) shall forward a copy of the complaint to the public servant concerned; and,
- (b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint.

The Act also differentiates between complaints concerning mal-administration by a public servant--"grievances"--and "allegations, which have direct bearing on corruption". Accordingly, the Lokayukta defines his function as "putting down corruption or maladministration" (Annual Report, 1972-3).

Complaints and their Processing:

Before any action can be taken on any complaint it must be written in the form of a signed, witnessed affidavit. This

procedure is not, however, necessary for those "in police custody, or in a gaol or asylum", whose letters "shall be forwarded unopened" (Section 9).

The machinery for actually investigating complaints and allegations is not always efficient. The Lokayukta must often await the results of a government investigation:

In all cases where disciplinary action is to be taken against a Government servant including cases in which the Lokayukta has held a full-scale investigation it is necessary to hold a departmental inquiry. (Governor's Explanatory Memorandum for the Annual Report, 1973-4, p.2)

In other words, if the Lokayukta receives an allegation that a bribe has been given, he must go to the appropriate Government Department (in this case, the Anti-Corruption Bureau) before he can make a recommendation. Unfortunately, as the Lokayukta, Mr. Kotval, writes in his first Annual Report:

The experience of the Lokayukta in this respect has not been happy. In important cases especially against a Minister, investigation (by the Anti-Corruption Bureau) has either not been made or is inordinately delayed. (Annual Report, 1972-3, p.11)

Mr. Kotval, after one year in office, was also dissatisfied with the scope of his jurisdiction. In his first Annual Report he recommended substantial amendments to the Act, under which the Lokayukta would be able to investigate complaints against the police, state-run companies, and municipal officials; he also recommended that the differentiation between "grievance" and "allegation" be dropped, as it had been in the Rajasthan Act. At the time of the publication of the second Report, the Government had granted the Lokayukta jurisdiction over officials of the five largest Municipal Corporations in the state, but was still considering the other suggestions. These proposals were

reiterated in the new Report, with one addition: funds were requested so that staff members could tour the state. Many would-be complainants were unable to afford the trip to Bombay to register their grievance, and the number of complaints had dropped significantly from the total of the year before.

ISRAEL

Name of Office	The Commissioner for Complaints from the Public
Relevant Legislation	The State Comptroller's law of 1958 and amendment to same on March 31, 1971.
Present Incumbent	Dr. I.E. Nebenzahl (reappointed November, 1976). Dr. Nebenzahl was a former banker, lawyer and university professor.
Term of Office	5 years
Address of Office	P.O. Box 1081 Jerusalem Israel
Population of Jurisdiction	3,500,000
Staff Complement	About 70
Average Number of Complaints per Annum	Approximately 5,500

Descriptive Analysis

The State Comptroller's Law of 1958 was amended on March 31, 1971 to give the State Comptroller (Auditor) jurisdiction as Commissioner for Complaints from the Public to investigate complaints against central and local government, government companies and state-supported institutions concerning acts or omissions contrary to law, made without lawful authority, contrary to sound administration, unduly harsh or manifestly unjust. The Public Complaints Commissioner is assisted by a special unit in the State Comptroller's Office called the Office of the Commissioner for Complaints from the Public. Although neither authority has executive powers to enforce its recommendations, each can feed information to the other, and Government departments find themselves not infrequently attacked on both flanks. The Office of the Commissioner for Complaints from the Public maintains branch offices in five cities - Jerusalem, Tel Aviv, Haifa, Beersheba and Nazareth. These offices are staffed basically by personnel who provide an information function as opposed to an investigative function, although the office in Tel Aviv is staffed with investigators and some matters are actually referred to Tel Aviv for investigation.

The State Comptroller is appointed by the President upon the recommendation of the House Committee of the Knesset (Parliament). Dr. I.E. Nebenzahl is serving his fourth five-year term as State Comptroller. Mr. Yehuda Salant is the Director General of the Office of the Commissioner for Complaints, an appointment made by a special Committee of the Knesset on the recommendation of the Public Complaints Commissioner. The Commissioner's salary is fixed by the Knesset but the budget of the office is covered by the Knesset Finance Committee to which an annual financial report must be rendered. In carrying out his duties the Commissioner is expressly made responsible to the Knesset (through the Review Committee, set up in 1974, to which he reports) and not to the Government.

Any person may submit a complaint to the Public Complaints Commissioner (PCC). A complaint, whether submitted in writing or submitted orally and taken down in writing as told by the complainant, must be signed by the complainant and bear his or her name and address. A special section has been set up to draft complaints made orally, and as a result many complainants get their problems straightened out without the need of registering a formal complaint. During 1974/75, the public submitted 3,500 oral complaints, only 264 of which were finally registered and taken up in the usual manner. As complaints are received in the Office of the PCC they are summarized, and these summaries are all read by the Commissioner the next day. The complaints are then assigned to one of the lawyer/investigators on the staff who then assumes the responsibility for following up the complaint. This may mean either the handling of the complaint through correspondence from the office or, alternatively, by actually going out into the field and conducting interviews. Once the investigation has been concluded a summary of the entire matter, from the original submission of the complaint to the closing of the case, is prepared and then reviewed by the PCC, Dr. Nebenzahl. Complaints from prison inmates are to be submitted in a sealed envelope and the Commissioner of Prisons, or a person authorized by him for this purpose, is to forward it to the PCC without opening it. The PCC may also initiate his own investigations.

There are a number of categories of complaints which the PCC has no authority to examine. These include: complaints against the President of the State, or against committees or members of the Knesset; complaints against the Government, against a committee of ministers or against a minister, in his capacity as a member of the Government, but not in his capacity as head of a department or as responsible for a sphere of activity; a complaint regarding a judicial act of a court or judge, of a tribunal or member of a tribunal; a complaint on a matter pending in a court or tribunal, or regarding which a court or tribunal has ren-

dered a substantive decision; and complaints of civil servants, police and prison officers on a matter concerning his service as an employee.

A complaint submitted more than one year after the act complained of took place, or after the act became known to the complainant, is not to be investigated unless the PCC finds that there are special grounds justifying an investigation. Otherwise, the PCC may investigate a complaint in any manner he deems fit and is not bound by the rules of procedure and evidence. The PCC must, however, bring complaints to the notice of the body or person whom the complaint is against and give them opportunity to respond to it. The PCC may demand an answer to the complaint within such period as he prescribes. If the PCC finds that the complaint was justified, he must duly notify the complainant, the body or person whom the complaint is against and, if he sees fit to do so - the superior as well. The PCC must state the reasons why he considers the complaint justified. The PCC may, in his answer, give a summary of his findings and he may point out to the body or person whom the complaint is against and to the superior the need to rectify a defect which the investigation has brought to light and the ways to rectify it. The body or the person whom the complaint is against is to inform the PCC of the steps taken as soon as possible, but in any event, not later than two months after receiving the aforesaid notification.

If the PCC finds that the complaint was not justified, he must duly notify the complainant, the body or person whom the complaint was against, and, if he sees fit to do so - the superior as well, and the PCC must state his reasons for finding the complaint unjustified. If the investigation of a complaint arouses the suspicion that a criminal offence has been committed, the PCC must bring notice of the matter to the Attorney-General; and he may likewise if he feels that a disciplinary offence under any law may have been committed. No court may hear an application for a remedy against the decisions and findings of the PCC in connection with a complaint.

The PCC shall submit to the Knesset each year, at the beginning of its session, a report on his activities, which should include a general survey and a description of the handling of a selection of complaints. The PCC may also submit to the Knesset special reports prior to the submission of the annual report. In 1974, an amendment to the Law was introduced, setting up a special Review Committee of the Knesset with the function of appointing the Director of the office and considering the Commissioner's annual reports. A memorandum describing the organization and operation of this Committee prepared by the Office of the Commissioner for Complaints from the Public is appended hereto.

THE KNESSET COMMITTEE FOR MATTERS OF STATE CONTROL

The following is a short outline of the work of the State Control Committee of the Knesset, with special reference to its tasks in connection with the functions of the State Comptroller as Commissioner for Complaints from the Public (Ombudsman).

1. The State Control Committee (which the State Comptroller Law refers to briefly as "The Committee") is one of ten standing committees of the Knesset. It was first set up at the beginning of the legislative period of the present Knesset (i.e. early in 1974). Prior to that, functions connected with the State Comptroller had been performed by the Finance Committee of the Knesset, along with its many other tasks.

The Committee has 15 members, representing the three largest factions in the Knesset. Its chairman is a member of the opposition, coming from the second largest faction in the Knesset.

Section 6 of the State Comptroller Law provides that:

The Comptroller shall carry on his activities in contact with the State Control Committee of the Knesset and shall report to the Committee on his activities whenever he thinks fit or is required to do so by the Committee.

2. The main form of activity of the Committee consists in considering the reports issued by the State Comptroller. There is no essential difference between the Committee's procedures when debating reports of the State Comptroller as such and when debating reports of the State Comptroller as Ombudsman. In fact, in all the Committee's work, no basic distinction is made between the two functions of the State Comptroller.

The Comptroller participates personally in each session of the Committee, being seated on the chairman's right at the head of the table. He always opens the debate with a short summary of the report in question. He is given the right to intervene at any stage in the discussions, and is the last speaker before the Committee summarizes its findings.

3. Section 46 (a) of the State Comptroller Law provides that:

The Commissioner shall each year submit to the Knesset, at the beginning of its session, a report on his activities, containing a general survey and an account of the handling of selected complaints;

and Section 46 (c) states:

When a report has been tabled in the Knesset, the Committee shall consider it and shall submit to the Knesset its conclusions and proposals for approval.

After the Ombudsman submits his annual report, a number of sessions of the Committee are devoted to debating it. In all these sessions the Commissioner is accompanied by the Director of the Commissioner's Office (i.e. the head of the Ombudsman section of the State Comptroller's Office). The first such session is devoted to a general debate on the report. This debate gives Committee members the opportunity to refer themselves to the performance of the Ombudsman section of the Comptroller's Office in general: statistical data, workload, the speed with which complaints are investigated, and particularly the cooperation of governmental units with the Ombudsman.

4. Later sessions of the Committee are devoted to individual cases investigated by the Ombudsman. The Ombudsman's annual report contains descriptions of several dozen such cases. Of these five or six, and if necessary even more, are taken up by the Committee. At these sessions the Comptroller is accompanied, besides by the Director of the Commissioner's Office, also by the assistant who was responsible for handling the particular complaint. The bodies complained against are represented on a high, but not necessarily the top level. Still, on occasion even a minister may participate in the debate.

The procedure at the Committee's sessions on particular Ombudsman cases is as follows: The State Comptroller opens with a short statement. Usually cases are picked where the body complained of has not taken sufficient corrective measures, and its representative is then called on to explain this attitude and to answer questions from members of the Committee. The Comptroller, if he so chooses, closes the session with his reactions to the statements made and his assessment of the situation.

5. Part or all of one session on the Ombudsman's annual report is devoted to reviewing implementation of the Committee's recommendations made on the basis of the previous year's report. This debate is based on follow-up findings of the Commissioner communicated to the Committee.

6. At a later session the Committee discusses and votes on its conclusions and recommendations with regard to the report and those sections it has debated. A clause relating to the follow-up findings on the previous year's report may also be included in the Committee's recommendations. This discussion is based on a draft set of resolutions prepared by the chairman of the Committee in consultation with the Ombudsman, and also possibly drafts submitted by individual Committee members. The majority resolutions of the Committee, together with amendments proposed by members who remained in the minority, are then tabled for debate by the Knesset in plenary session.

7. The debate in plenary session is made use of by representatives of all parties to comment on the work of the Ombudsman in general and especially on those matters where he has expressed criticism. To some extent this is a debate on the performance of the administration in general, but ministers do not intervene. The debate is opened and wound up by the chairman of the Committee.

The State Comptroller follows the debate from his special seat in the V.I.P. section of the gallery. He cannot address the Knesset directly. To the very limited extent needed, the chairman of the Committee informally makes himself the Comptroller's spokesman.

8. So far with regard to the annual report. Under Section 46 (b) of the State Comptroller Law:

The Commissioner may, prior to the submission of the annual report, submit to the Knesset a special report.

Such a report would then have to be considered by the Committee. Under a recent amendment to Section 43 (b) of the Law, the Ombudsman may even without such a formal step (a special report, like any other material tabled in the Knesset, would have to be published) bring to the attention of the Committee any case in which the body complained against has failed to give a satisfactory reply to a recommendation of the Ombudsman. Neither of these powers has yet been made use of; pointing out to the organization concerned that they might be used has usually been sufficient to bring about satisfactory results.

9. The Committee's procedure for dealing with reports of the State Comptroller as such (the annual report and special reports on government corporations, local authorities, etc.) is similar, mutatis mutandis. In practice the Committee, which meets regularly for two two-hour sessions each week during about forty weeks in the year when the Knesset is in session, devotes perhaps around 10% of its sessions to Ombudsman matters.

The Committee has certain incidental tasks in connection with the State Comptroller's work. These include appointing the Director of the Commissioner's Office, at the recommendation of the Comptroller; and approval of the State Comptroller's financial report on the expenses of his office. (It should however be noted that the budget of his office is authorized by the Finance Committee of the Knesset. The government has no role in fixing the budget or reviewing its implementation; it only has to make available to the Comptroller the amounts authorized in the budget for his expenditure.)

10. An important point is that the Committee does not, and is not considered entitled to, investigate administrative matters on its own initiative. Its competence begins with the submission of a report by the State Comptroller in his capacity as Comptroller or Ombudsman. The Committee can and

does occasionally bring matters deserving investigation to the attention of the State Comptroller in his Comptroller capacity. As Ombudsman the State Comptroller may act only on a complaint about a specific case. Such a complaint may be lodged either by a person directly affected by the action or omission complained of, or, under a special provision of the law, by any member of the Knesset, even though he is not personally affected. In this way of course members of the Committee also may bring complaints before the Ombudsman, but they do so as individual members of the Knesset and without any privilege in virtue of their membership of the Committee.

11. The deliberations of the Committee are held in camera. However, unless state secrets are involved, the chairman of the Committee usually prepares a public statement after the Committee's sessions. Members of the Committee also are not held to very strict secrecy regarding their own statements made during meetings of the Committee.

The proceedings of the Committee are invariably courteous, although sometimes members' questions to the representatives of the administration may be rather searching. The relationship between the Committee and the State Comptroller/Ombudsman is close and characterized by helpful cooperation.

NEW ZEALAND

Name of Office	The Ombudsmen
Relevant Legislation	Parliamentary Commissioner (Ombudsman) Act 1962 replaced by the Ombudsmen Act 1975
Present Incumbents	<ol style="list-style-type: none">1. George R. Laking: Chief Ombudsman. Mr. Laking was formerly Secretary of Foreign Affairs and Permanent Head of the Prime Minister's Department.2. A. Eaton Hurley. Mr. Hurley was a former solicitor.3. Lester J. Castle. Mr. Castle was formerly President of the New Zealand Law Society.
Term of Office	5 years
Address of Office	Second floor Mayfair Chambers 48 The Terrace Wellington, New Zealand
Population of Jurisdiction	3,000,000
Staff Complement	34 exclusive of the Ombudsmen
Average Number of Complaints per Annum	Approximately 2,000

Descriptive Analysis

The Ombudsman institution was established in New Zealand in 1962 after the concept had been studied in Denmark. New Zealand was the first country with a parliamentary system in the British tradition to adopt the office. Since that time the office has undergone substantial changes in both jurisdiction and organization. The first Parliamentary Commissioner for Administration, appointed in 1962, was Sir Guy Powles. At the time the Ombudsmen Act 1975 came into force providing for the appointment of several Ombudsmen, Sir Guy was appointed as Chief Ombudsman and Mr. Laking and Mr. Hurley were appointed as Ombudsmen. Sir Guy resigned from office on April 5, 1977 upon attaining 72 years of age and was succeeded as Chief Ombudsman by Mr. Laking. Mr. Castle was appointed to replace Mr. Laking as Ombudsman.

The Ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives. The Chief Ombudsman is responsible for the administration of the office and for the coordination and allocation of the work between the Ombudsmen. The Chief Ombudsman is empowered to appoint such officers and employees as may be necessary for the carrying out of the functions of the office with the qualification that the number of such officers and employees shall be determined by the Prime Minister. The terms and conditions of the staff's employment must be approved by the Minister of Finance. The office has two branch offices other than the main office in Wellington, the capital; one branch office, headed up by Mr. Hurley, is located in Auckland, the other in Christchurch.

The principal function of the Ombudsmen is "to investigate any decision or recommendation made, or any act done or omitted, ...relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organizations named" in the Schedule to the Act. An important aspect of the Ombudsmen Act 1975

was the extension of the jurisdiction of the office to include local organizations as from April 1, 1976. The Ombudsmen may act on a complaint or of their own motion. Additionally, any Committee of the House of Representatives or the Prime Minister (with the consent of the Chief Ombudsman) may refer a matter to the Ombudsmen for investigation and report.

By S.13(7) the Ombudsmen are barred from conducting investigations into matters of administration in cases where:

- (a) there is a right of appeal or objection, provided under any Act, or regulation, on the merits of the case, to any Court or tribunal constituted by or under any enactment, whether the right of appeal, etc. has been exercised, and whether or not any time prescribed for the exercise of that right has expired: provided that notwithstanding any right of appeal, etc., if by reason of special circumstances it would be unreasonable to expect him to resort or to have resorted to it:
- (b) a person acted in his capacity as a trustee within the meaning of the Trustee Act, 1956:
- (c) a person acted as legal adviser to the Crown pursuant to the rules approved by the Government for the conduct of Crown legal business, or acted as counsel for Crown in relation to any proceedings:
- (d) the action concerned a member of the Police and it may be the subject of an inquiry under S.33 of the Police Act 1958, unless the complaint was conveyed to a member of the Police superior in rank to the member to whom the complaint relates; and
 - i) the complaint has not been investigated; or
 - ii) the complaint has been investigated and the complainant is dissatisfied with the final result.

The Schedule appended to the new Act is in three parts and is exhaustive of the Ombudsman's jurisdiction. This listing concept has caused some problem to the Ombudsmen because, on occasion, they will be faced with a complaint concerning an authority or department that is patently a government authority but will be precluded from investigating simply because it is not an authority contained in the Schedule.

NORTHERN IRELAND

Name of Office	Commissioner for Complaints Parliamentary Commissioner for Administration
Relevant Legislation	Commissioner for Complaints Act (N.I.) 1969 Parliamentary Commissioner Act (N.I.) 1969
Present Incumbent	Stephen McGonagle (appointed January 1, 1974)
Term of Office	Life (mandatory retirement at age 65)
Address of Office	48 High Street Belfast Northern Ireland BT1 2BE
Population of Jurisdiction	1,700,000
Staff Complement	
Average Number of Complaints per Annum	Commissioner for Complaints: 500 Parliamentary Commissioner: 70

Descriptive Analysis

Both the Office of the Commissioner for Complaints and the Parliamentary Commissioner for Administration were created in November of 1969 by separate enactments of the Northern Ireland Parliament. Since the inception of both offices, the Commissioner for Complaints has acted in a dual capacity in that he has also had the responsibilities of the Parliamentary Commissioner.

The Commissioner for Complaints can act on the complaint of any person who alleges that he has suffered some injustice in consequence of maladministration on the part of any local or public body that is included within the terms of reference of the Act. Whilst any person can present himself to the Commissioner for Complaints, the Parliamentary Commissioner is approachable only through a Member of the Northern Ireland Assembly. In this regard, a prospective complainant must bring his complaint to his Member of the Assembly and the complaint must relate to a department of the Northern Ireland Government. A list of the affected departments will be found in the Parliamentary Commissioner Act. The Member of the Assembly to whom a complaint is brought must then pass it on to the Parliamentary Commissioner.

The two offices are administered by two senior executives. Mr. Desmond Heatherington heads up the office of the Parliamentary Commissioner, and Mr. Edward Kennedy is in charge of the Office of the Commissioner for Complaints. Both offices and the three senior officials are housed in the same building.

The Commissioner for Complaints

The Commissioner for Complaints holds office during good behaviour and is required to leave office on attaining the age of 65. The Commissioner may appoint his staff and determine

their rates of remuneration with the approval of the Minister of Finance. The staff members of the Parliamentary Commissioner can be authorized by him to assist the staff of the Commissioner for Complaints in their tasks.

By Section 4 the Commissioner for Complaints has jurisdiction to deal with those local and public bodies contained in Schedule 1. This provision is subject to Section 13(1)(b) which states that the Governor may by Order in Council -

"(b) amend Schedule 1 by the alteration of any entry, or the removal or qualification of any entry, or the insertion of any additional entry;".

The Commissioner is given power to investigate by Section 5 of the Act. It is interesting to note that the section allows for the levying of an amount up to 5 pounds for every complaint coming to the Commissioner and not being a complaint covered by Section 5(2). In practice, however, no fee has ever been prescribed or requested for any class of complaints. The salient portion of the section reads:

- 5.(1) Subject to the provisions of this Act, the Commissioner may investigate any action by or on behalf of a local or public body to which this Act applies, being action taken in the exercise of the administrative functions of that body, where --
 - (a) a complaint is made to the Commissioner in accordance with this Act by a person who claims to have sustained injustice in consequence of maladministration in connection with the action so taken with a request to conduct an investigation thereon; and
 - (b) in such cases as may be prescribed, not being cases in which by virtue of subsection (2) payment of a fee is not required, the complaint is accompanied by a fee of such amount, not exceeding £5, as may be prescribed.

Maladministration has been held to cover administrative actions based on improper considerations or conduct (e.g. malice, bias, or arbitrariness). The Commissioner is precluded from investigating the merits of a discretionary decision unless he has found maladministration relating to the taking of a decision.

The Commissioner is prohibited from looking into a matter where a right of appeal, review, etc. exists or existed, however, the section contains what appears to be a wide saving provision. Thus, Section 5(3) is as follows:

- "(3) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say --
- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted under any statutory provision or otherwise; or
 - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law;
- so, however, that the Commissioner may conduct an investigation --
- (i) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (a) or paragraph (b), if the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it; or
 - (ii) notwithstanding that the person aggrieved had exercised such a right as is mentioned in paragraph (a), if he complains that the injustice sustained by him remains unremedied thereby and the Commissioner is satisfied that there are reasonable grounds for that complaint."

Though Section 5(3)(i) and (ii) would at first blush seem to give the Commissioner wide powers of intervention, the practice, it seems, has been for the Commissioner to avoid the invocation of these powers.

Finally, reference should be made to Section 7(2) of the Act wherein it is provided that, if upon an investigation being carried out, it is found that a complainant has suffered an injustice as a result of maladministration, the said complainant may apply to the County Court for damages. The relief that may be applied for under Section 7 extends from the awarding of damages to the granting of injunctions by the Court. An appeal lies from the decision of the County Court under Section 7(4). The makeup of this section is interesting. Section 7(1) denotes the purposes of investigation and the section then goes on to provide methods of resolution of complaints, one method being resort to the courts. Set out below is Section 7(1) to Section 7(3).

Purpose of investigations and provision for giving effect to recommendations made thereon.

7.(1) The purposes of the investigation by the Commissioner shall be --

(a) to ascertain if the matters alleged in the complaint (i) may properly warrant investigation by him under this Act, (ii) are in substance, true and (iii) disclose any maladministration by or on behalf of the body against whom the complaint is made; and, where it appears to him to be desirable,

(b) to effect a settlement of the matter complained of or, if that is not possible, to state what action should in his opinion be taken by the body against whom the complaint is made to effect a fair settlement thereof or by that body or by the person aggrieved to remove, or have removed, the cause of the complainant.

(2) Where on an investigation made by him under this Act, the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration, the county court may on an application made to it by that person, in accordance with county court rules and upon notice to the body against whom the complaint investigated was made, by order

award that person such damages as the court may think just in all the circumstances to compensate him for any loss or injury which he may have suffered on account of --

(a) expenses reasonably incurred by him in connection with the subject matter of the maladministration on which his complaint was founded; and

(b) his loss of opportunity of acquiring the benefit which he might reasonably be expected to have had but for such maladministration: subject, however, to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable at common law.

(3) Where on application made to it under subsection (2) it appears to the county court that justice could only be done to the person aggrieved by directing the body against whom his complaint was made to take, or to refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable so to do, make an order containing such a direction and --

(i) for the purposes of such an order the county court shall have the like jurisdiction as the High Court to grant any mandatory or other injunction; and

(ii) disobedience to any such order by any body on whom notice of the making thereof was duly served or by any member or officer of that body may be treated as a contempt of court to which section 141 of the County Courts Act (Northern Ireland) 1959 applies.

The Commissioner is empowered to pay to persons involved in the investigation of a complaint their expenses incurred during the course of the investigation, and these sums must be in accordance with scales established by the Minister of Finance. Under Section 11(3) the Commissioner shall lay before Parliament an annual report, and he is authorized to submit to Parliament other reports as from time to time he considers advisable.

The Commissioner is barred from entertaining complaints relating to special areas of concern. Schedule 2 of the Act lists these prohibited areas of investigation as follows:

1. Action taken by or with the authority of the Minister of Home Affairs or of the Attorney-General for the purposes of investigating crime or of protecting the security of Northern Ireland or the United Kingdom.
2. The commencement or conduct of any civil or criminal proceedings before a court of law in the United Kingdom, or of proceedings before any international court or tribunal.
3. Action which is or may be investigated by the Attorney-General with a view to the institution of proceedings under section 11 of the Local Government (Members and Officers) Act (Northern Ireland) 1964:
Provided that, if, after the Attorney-General has decided not to proceed with such an investigation in respect of it, or after the final determination of any such proceedings in respect of such action, a person aggrieved complains that such action resulted in his sustaining injustice has not been remedied, the Commissioner may, if satisfied that there are reasonable grounds for that complaint investigate such action and may do so notwithstanding any limitation of time imposed by section 6(4) so long as the action occurred not earlier than one year before the passing of this Act.
4. Action in the discharge of a professional duty by a medical or dental practitioner, pharmacist, nurse, midwife or member of a professional supplementary to medicine in the course of diagnosis, treatment or care of a particular patient.

5. Action taken in respect of any matter which is within the scope of the powers of the Northern Ireland Parliamentary Commissioner for Administration.
6. Action taken in respect of any matter outside the scope of the powers of the Parliament of Northern Ireland.

Complaints to the Commissioner must be submitted in writing and the Commissioner requires that every complaint, at the very least, contain four pieces of information, a) the body complained against; b) the nature of the complaint; c) a claim that the writer has suffered injustice as a result of maladministration; and d) a request that the Commissioner investigate the complaint. When investigating a complaint the Commissioner's staff will first interview the complainant or government employee involved. In a large number of cases the matter is resolved at this stage. If, however, further investigation is required, the Commissioner may visit government offices and inspect files. He may decide that it is advisable to hold a hearing, in which case any person summoned to the hearing will be entitled to have counsel present.

The Parliamentary Commissioner for Administration

The basic jurisdictional difference between the functions of the Commissioner for Complaints and the Parliamentary Commissioner is that whereas the former deals with complaints against local authorities and some public bodies, the latter deals with complaints alleging maladministration on the part of government departments. In the case of the Parliamentary Commissioner the complaint must be made by a member of the public to a Member of the Assembly, and it will then be handed over to the Commissioner for investigation.

The Parliamentary Commissioner's power to initiate investigations in matters where the complainant had a right of appeal, etc. is more restricted than is the power of the Complaint's Commissioner. Subparagraph (ii) of Section 5(3) is deleted from the Parliamentary Commissioner Act, namely that even if the person exercised his right of appeal, etc. if he feels that the injustice remains unremedied, he may still come to the Commissioner who could then commence an investigation.

It is interesting to note that both enactments provide for penalties if an investigation by either Commissioner is obstructed. The pertinent feature here is the type of penalty provided for. Instead of summary conviction prosecutions and monetary fines, both statutes determine that the Commissioner may treat any obstruction as contempt of court as if the obstruction had occurred in a proceeding before the High Court. The Commissioner may bring the matter before a judge of the High Court, and there attempt to certify it. The Court, upon hearing the matter, may then deal with the transgressor accordingly.

Upon conducting his investigation or refusing to investigate the Commissioner shall inform the Member of Parliament of his findings or otherwise, and if he is of the opinion that an injustice has been done, he may lay a special report of the matter before Parliament. He is, in addition, required to submit an Annual Report to Parliament. In the Parliamentary Commissioner Act there is no provision made for a matter to be taken before the County Court, should there be a finding in a complainant's favour.

The Parliamentary Commissioner is, by Schedule 2, precluded from investigating the following matters:

1. Action taken in matters certified by a Minister to affect relations or dealings between the Government of Northern Ireland and any other Government.

2. The commencement or conduct of any civil or criminal proceedings before any court of law in the United Kingdom, or of proceedings before any international court or tribunal.
3. Action taken on behalf of the Department of Health and Social Services by *...a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972, the Northern Ireland Central Services Agency for the Health and Social Services or the Northern Ireland Staffs Council for the Health and Social Services.
4. Action taken in matters relating to contractual or other commercial transaction, whether within Northern Ireland or elsewhere, being transactions of a government department or authority to which this Act applies or of any such authority as is mentioned in section 6(1) (a) or (b), and not being transactions for or relating to --
 - (a) the acquisition of land, compulsorily or in circumstances in which it could be acquired compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid.
5. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to --
 - (a) service in any office or employment under the Crown or under any authority listed in Schedule 1 other than service in the Civil Service in any Government department or other authority listed in that Schedule,
 - (b) service in any office or employment (other than service in the Civil Service in any Government department or other authority listed in Schedule 1) or under any contract for services in respect of which power to take action, or to determine or approve the action to be taken in such matters is vested in the Governor, any Minister or Ministry, or any such authority as aforesaid.

NORWAY

Name of Office	Ombudsman for the Civil Administration (Stortingets Ombudsmann for Forvaltningen)
Relevant Legislation	Parliamentary Act of June, 1962, the Storting's Ombudsman for the Administration. Amended by Act of March 22, 1968
Present Incumbent	Judge Erling Sandene
Term of Office	4 years (length of Storting - Parliament)
Address of Office	Stortingets Ombudsmann for Forvaltningen Akersgaten, 45 Oslo, DPT Oslo 1, Norway
Population of Jurisdiction	3,700,000
Staff Complement	14 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 1,600

Descriptive Analysis

The Ombudsman is elected by the Storting (Parliament) every four years. That is to say, immediately following each parliamentary election (every 4 years) the new Storting must proceed to elect a new Ombudsman for the Civil Administration. In practice the Ombudsman, it would appear, has been re-elected as a matter of course; the first Ombudsman for Norway, Judge Andreas Schei, took office January 1, 1963 and retired July 1, 1974.

The basic principle guiding the labours of the Ombudsman is found in S. 3 of the Act: "it is the duty of the Ombudsman ...to endeavour to ensure that the public administration does not commit any injustice against any citizen".

The jurisdiction outlined by S. 3 of the Act is further amplified by S. 1 of the Storting's Rules for the Ombudsman:

"The Ombudsman shall endeavour to ensure that the public administration does not commit any injustice against any citizen and that civil servants and others in the service of the administration do not commit errors or neglect their duties".

The wide jurisdiction implied by S. 3 of the Act and by S. 1 of the Storting Rules for the Ombudsman is circumscribed by S. 4 of the Statute. The Ombudsman is precluded from dealing with complaints involving decisions of the Cabinet. Likewise, he has no authority to entertain complaints regarding the functions of the Courts of Justice and the Auditor of Public Accounts. The Ombudsman's jurisdiction was extended to municipal and local authorities in 1968 and this extension of jurisdiction accounted for a substantial increase in the number of complaints received by the Ombudsman in the years following 1968. But the Ombudsman cannot deal with matters relating to decisions made by a county or municipal council in accordance with the law, and where the power to make such decisions may not be transferred to other authorities or institutions.

Norway also has an Ombudsman whose responsibility re-

volves solely around the affairs and complaints that emanate from the military. Obviously, in these cases the Ombudsman for the Civil Administration will have no jurisdiction. The Ombudsman for the Military was established in 1952 and in this office the Ombudsman is assisted by a six member council. The Military Ombudsman also has jurisdiction to deal with conscientious objectors.

The Ombudsman is the delegate of the Storting but he functions independently of that body. If the Storting makes a decision affecting the administration then the Ombudsman is barred from entertaining any complaint regarding that decision (see S. 5, para. 4 of the Rules for the Ombudsman). Presumably this refers to matters of policy which are decided by the Storting, Odelsting, (Lower House). The Ombudsman must submit a report to the Storting once a year dealing with his activities during the year just passed.

By S. 12 of the Storting's Rules, the Ombudsman is given authority to decide how much of and in what manner a complaint will be released to the public at large. Section 12 states:

"The Ombudsman decides at his own discretion whether and in what form he shall inform the public of his action in the case".

He is required to keep the agency concerned and the complainant informed of the progress of his investigation, but he has the sole discretion as to just what he will release to the press and therefore to the public. It falls to him to determine whether it would be advisable to release the particulars of any complaint to the public.

Complaints and Their Processing

Anyone who feels that he or she has been treated unfairly by the public administration may complain to the Ombudsman. The complaint must be written and signed by the complainant and it must be submitted within one year of the date that the alleged wrongdoing occurred, or if the wrongdoing was of a continuing nature, within

one year of the cessation thereof.

The Ombudsman may intervene in a case even though the matter is one that can be the subject of appeal to a higher administrative authority, but he must have particular and compelling reasons for so doing. He can demand access to records and documents and he can, in addition, subpoena those whom he thinks can assist in any given investigation. Those subpoenaed will have their statements recorded before a court of law sitting in camera. By S. 5 of the Act the Ombudsman can make investigations of his own motion.

The Ombudsman is required to express a personal opinion on all cases submitted to him and furthermore, he can state his opinion regarding any disciplinary measures to be taken against a civil servant who is found to be guilty of misconduct. This opinion can be forwarded to the public prosecutor as well as the appointing or disciplinary authority having control over the civil servant in question.

By S. 9, para. 7 of the Storting's Rules for the Ombudsman it is permissible for the Ombudsman to recommend the awarding of damages in cases where he is of the opinion that such a disposition would be appropriate. Section 9, para. 7 reads:

If the Ombudsman as indicated by the circumstances finds that damages should be awarded he may make a statement to that effect.

The Norwegian experience has shown that this recommendation of damages will most often be made where the wrong done to the complainant can simply not be rectified by the altering of the decision originally made by the government agency.

The Ombudsman is assisted by a Chief of Staff and seven counsellors, all of whom are trained in law. The Chief of Staff distributes the cases to the counsellors, none of whom have any specialized area of concentration. Once jurisdiction is established,

the documents pertinent to the case under consideration are requested from the agency concerned. If doubts about the correctness of any administrative decision arise, the Ombudsman will forward the complaint to the government agency with his doubts noted. A decision can never be criticized unless the agency has been given an opportunity to defend itself. When the case has been sufficiently clarified, the counsellor drafts a statement and it is then personally considered by the Ombudsman, who must make all decisions as to whether a case will be supported or rejected.

Vis-a-vis the appointment of members of his staff, the Norwegian Ombudsman is required to go through quite a complicated procedure. In the first instance, in order to obtain the funds to allow the employment of an additional member of staff, the Ombudsman is required to go to the Administration Committee of Parliament. In that Committee he documents his case for personnel in addition to those already on staff. This Committee will then make a recommendation to the Storting which will vote to either approve or disapprove the Committee's recommendation. Assuming that the Committee approves the Ombudsman's request for additional personnel and this is passed in the Storting, the appointment of the actual person or persons must then go through the appointment body of the Storting. This is a board in Parliament comprised of the president of the Storting, the president of each chamber and the vice-president of each party. This body will pass upon the recommendation of the Ombudsman regarding the person or persons to be appointed.

Regarding the communication of the office's function to the public at large, Mr. Sandene acknowledged that this was an extremely important requirement. There has been no advertising program as such in Norway but Mr. Sandene stressed that it was important to remember that the press demonstrates considerable interest in the office of the Ombudsman and, like Sweden, articles concerning the Ombudsman's office will appear in the press almost daily. He feels that this has the effect of increasing public awareness as to the office's role. He also indicated that the public's awareness of the Ombudsman function had been greatly increased subsequent to the

appointment of the Consumer Ombudsman. Apparently the Consumer Ombudsman, Mr. Charles Philipson, has been very aggressive in advertising his office and Mr. Sandene is of the view that this program assisted the public in coming to an awareness of his function.

Regarding access to the office, complainants in areas far distant from the Ombudsman's office, for instance in the northern part of the country, are serviced through the implementation of a program whereby a complainant may go to any lawyer located in the north who will assist him in formulating his complaint and assembling the appropriate documents. The accounts of the lawyers for services rendered in this regard are paid by the Norwegian Legal Aid Plan at the lawyer's own rate and not at the minimum Legal Aid rate. This program has been advertised in all of the newspapers in the four northern-most provinces to which it applies and Mr. Sandene indicated that he was pleased with the results. The program was commenced in 1974 and 1975 as an experimental scheme and is to be continued on the same basis. Although lawyers in these provinces are not sworn in as representatives of the Ombudsman's office, Mr. Sandene indicated that it was his view that people looked upon them as quasi-representatives of his office. Looking to the annual report for 1975-6, it is interesting to note that the proportion of complaints per capita coming from these provinces is considerably in excess of those coming from the rest of the country.

The Ombudsman's annual report is delivered to the Justice Committee which is another permanent standing committee of Parliament. It is comprised of approximately 11 members which among themselves will elect a chairman for the purpose of receiving the Ombudsman's report. While all the members of the Justice Committee are expected to read the report the chairman has the responsibility of preparing the Committee's statement of opinion to the Parliament concerning the Ombudsman's report.

The text of this statement is then made the subject of discussion in the Committee before being presented to the Parliament. This Committee does not call in the Ombudsman or officials of government for the purpose of following up on the Ombudsman's report. In the Parliament, the chairman of the Committee will then move for adoption of the Committee's statement concerning the Ombudsman's report which may or may not be the subject of the debate. Although the Ombudsman will present in the Parliament at this time there is no questioning of him.

PAPUA NEW GUINEA

Name of Office	The Ombudsman Commission
Relevant Legislation	The Constitution of the Independent State of Papua New Guinea, 1975; The Organic Law on the Ombudsman Commission; The Organic Law on the Duties and Responsibilities of Leadership.
Present Incumbents	<ol style="list-style-type: none">1. Father Ignatius Kilage, Chief Ombudsman, former Public Services Commissioner.2. Andrew Maino, former Senior Magistrate.3. Sunny K. Cherian.
Term of Office	3 years in respect of present incumbents. Future appointments: 6 years for citizens, and 3 years for non-citizens.
Address of Office	Box 2123 Konedobu Papua New Guinea
Population of Jurisdiction	2,500,000
Staff Complement	10 exclusive of Ombudsmen
Average Number of Complaints per Annum	Approximately 500

DESCRIPTIVE ANALYSIS

Papua-New Guinea's Third House of Assembly was elected in 1972, at a time when Self-Government from Australia was being seriously considered. The House formed a committee known as the Constitutional Planning Committee (CPC) to develop proposals for a Constitution for an Independent Papua New Guinea. The Committee's final report came down on August 13, 1974, and a Chapter (3) on a "Leadership Code" and another Chapter (11) on "The Ombudsman Commission" were included. The Leadership Code specified rules of conduct for public officials, and covered such matters as the exposing of all conflicts of interest and the making of accurate statements of income. The draft Constitution was presented to the House of Assembly (which for the purpose of debating the Constitution formed itself into a Constituent Assembly) on May 29, 1975, and was debated in June, July and August. The Constitution and a number of Organic Laws, including those on the Ombudsman Commission and Leadership, were adopted on August 15, 1975, and all were to come into effect on Independence Day - September 16, 1975.

The positions for the posts of Chief Ombudsman and two other Ombudsmen were advertised throughout Papua New Guinea in October, 1975. Applications were considered by the Ombudsman Appointments Committee which consisted of the Prime Minister as Chairman, the Chief Justice, the Leader of the Opposition, the Chairman of the appropriate Permanent Parliamentary Committee, and the Chairman of the Public Services Commission. The appointments were made by the Governor-General in late November, 1975, and the Office of the Ombudsman Commission was opened to the public in early January, 1976.

According to Section 218 of the Constitution the purposes of the Ombudsman Commission are:

- (a) to ensure that all governmental bodies are responsive to the needs and aspirations of the People;

- (b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them;
- (c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and,
- (d) to supervise the enforcement of the Leadership Code.

The Chief Ombudsman is responsible for the general direction of the activities of the Office. He is also directly involved in cases resulting from complaints, and in investigations surrounding possible breaches of the Leadership Code. Ombudsman Maino has primary responsibility for the Office's Complaint function, while Ombudsman Cherian has primary responsibility for the Leadership function.

Section 14 of the Organic Law on the Ombudsman Commission provides that:

- (1) The Commission shall meet at such times and places as are fixed by the Chief Ombudsman.
- (2) The Chief Ombudsman shall preside at all meetings of the Commission.
- (3) For the purpose of conducting an inquiry under this Law, the quorum at a meeting of the Commission is two.
- (4) All matters before a meeting of the Commission shall be decided in accordance with the majority of votes.
- (5) In the event of an equality of votes on a matter, the Chief Ombudsman has a casting,

as well as a deliberative vote.

- (6) The Commission shall cause minutes of its meetings to be kept.
- (7) Subject to this Law, the procedures of the Commission are as determined by it.

With regards to the delegation of powers Section 15 of the Organic Law on the Ombudsman Commission reads:

- (1) The Commission may, with the prior approval of the Prime Minister, by instrument in writing under the hand of the Chief Ombudsman, delegate to any member or officer of the Commission all or any of its powers and functions (other than this power or function or any prescribed power or function) so that the delegated powers and functions may be exercised and performed by the delegate in relation to the matters or class of matters specified in the instrument of delegation.
- (2) Every delegation under Subsection (1) is revocable, at will, and no such delegation affects the exercise of a power or the performance of a function by the Commission.

The Ombudsman Commission has a wide jurisdiction ranging from Government bodies at the Local Council level (of which there are some 160 in Papua New Guinea), to Provincial Government bodies (a number of which are presently being formed), through to the National Government and all its Departments and various agencies. The Commission cannot enquire into, however, the justifiability of a policy of a Minister of the National Government, nor the exercise of a rule-making power by local government authorities. The Commission is equally without jurisdiction to enquire into a

decision by a court, except insofar as the decision may show an apparent defect in law or administrative practice.

Any person may make a complaint to the Commission concerning any matter that is within the jurisdiction of the Commission. There is no formal procedure laid down for filing a complaint. Nevertheless the Ombudsmen have been given the authority to dismiss a complaint, if in their opinion:

- (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or,
- (b) the complainant has available to him another remedy or channel of complaint the he could reasonably be expected to use; or,
- (c) the complainant has not a sufficient interest in the subject of the complaint; or,
- (d) the complaint has been too long delayed to justify an investigation; or,
- (e) the Commission has before it other matters more worthy of its attention; or,
- (f) its resources are insufficient for adequate investigation.

The Commission may, in addition to acting upon complaints, enquire into a matter on its own initiative. A member of the Commission may, at any time, enter upon any premises occupied by any State Service, provincial government body, local government body or statutory body over whom it has jurisdiction and inspect the premises, and carry out in the premises any investigation that is within its jurisdiction. Before entering upon any premises, however, the member of the Commission must

notify the Permanent Head or statutory head or other person in charge of the premises. The same procedure applies to the handling of complaints: before investigating the Committee must inform the responsible person of its intention to make an investigation. Every investigation is to be conducted in private, and the Commission may hear or obtain information from any person who the Commission considers would be of assistance.

The Commission may not make any comment in its report that is adverse to or derogatory of any person or agency without providing them with a reasonable opportunity of being heard, and without fairly setting out their defence in its report. The Commission may, in its discretion, at any time, during or after any investigation, consult any Minister who is concerned in the matter of the investigation. On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commission must consult that Minister after making the investigation and before forming a final opinion on the matter it has investigated.

The Commission's main weapon is the power of its reasoned opinion. The Commission has no power to bring an action against public officials, but may refer matters to the Public Prosecutor if action by him is thought to be warranted and may make such recommendations as it thinks fit. If the Commission so requests, the responsible Minister, Permanent Head or statutory head, as the case may be, must, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations. Where the Commission is of the opinion that an administrative action has produced unfair or objectionable results and that that action was caused wholly or partly by legislation, the Commission may forward a report on the matter to the relevant legislative body, i.e. in the case of National legislation - the Parliament. The Commission may, at its discretion, publish the results of any investigation carried out by it by forwarding a copy of its conclusions, recommendations and sugges-

tions to the officials, legislators and members of the judiciary most concerned.

The Ombudsman Commission must present once a year a report on the functions and workings of the Commission, with such recommendations as to improvement as the Commission thinks proper. The Commission may also make, on its own initiative or at the request of the Parliament or of the National Executive, other reports on any aspect of the Commission's work.

SWEDEN

Name of Office	Office of the Parliamentary Ombudsmen (In Swedish: JO, or justitieombudsman)
Relevant Legislation	1. Act of Instruction to the Parliamentary Ombudsmen (Swedish Statutes: 1057) 2. The Riksdag (Parliament) Act 3. The Instrument of Government, 1975 4. The Penal Code
Present Incumbents:	1. Per-Erik Nilson: Chief Parliamentary Ombudsman. 2. Anders Wigelius: former Deputy Ombudsman. 3. Karl-Erik Uhlin: former Secretary/Chief-of-Staff of the Ombudsmen's Office. 4. Lief Ekberg: former President of the Chamber of the Court of Appeal in Gothenberg.
Term of Office	4 years from date of election by the Riksdag. Re-appointment is customary if the Ombudsman still 'enjoys confidence in the Riksdag'.
Address of Office	Riksdagens Justitieombudsman Box 16327 S-103 26 Stockholm Sweden
Population of Jurisdiction	8,100,000
Staff Complement	Ombudsmen are assisted by a staff of about 55 (at present 25 lawyers, as well as registrars, typists, ushers, etc.)
Average Number of Complaints per Annum	Approximately 3,000

DESCRIPTIVE ANALYSIS

The Office of the Parliamentary Ombudsman was established in 1809 as a means of ensuring that laws enacted by the Riksdag (Parliament) were observed by judges, civil servants, and military officers. In 1915, the Military Ombudsman was appointed to supervise the military services, and the jurisdiction of the Parliamentary Ombudsman (the JO, or justitieombudsman) was extended in 1957 to include all municipal boards and officials, except for elected members of municipal councils. In 1968, the Offices were amalgamated and three parliamentary commissioners were appointed who all had the same rank but were responsible for different spheres of supervision. One Ombudsman supervised the courts of justice, the public prosecutors, the police and the armed forces. A second Ombudsman supervised the field of social welfare and institutional care, as well as matters relating to social insurance, education, and the general public's right of access to official documents, (this principle of disclosure, laid down in the Freedom of the Press Act, means that all documents submitted to central government and local authorities must be available for public inspection. The same principle enables the mass media to monitor administrative action. Non-disclosure is allowed only for matters of national security and the private affairs of individuals). The third Ombudsman supervised those who handled cases on taxation, checked the execution of judicial decisions, and supervised local government.

Within the Ombudsmen's jurisdiction are included all officials (except members of the Cabinet, and the Chancellor of Justice), Judges (with some limitations where members of the Supreme Court of Justice and the Supreme Administrative Court are concerned), municipal boards and officials (except elected members of the municipal councils), clergymen of the State Lutheran Church, and military officers and officials. Complaints may be made by anyone in writing or investigation may be initiated by the Ombudsmen, who also have the discretion to decide which complaints shall be investigated. The Ombudsmen have power to inves-

tigate with access to files and minutes of courts and agencies, and they may call upon officials for assistance. The Ombudsmen have authority to bring criminal proceedings against public officials, and in such actions they can act as prosecutors. Currently there are about five prosecutions a year. The Ombudsmen are also authorized to ask an agency to institute its own intra-departmental disciplinary proceedings against an official at fault. If, in the opinion of the Ombudsman who is handling the case, the competent agency is dealing too leniently with the matter, the Ombudsman may appeal to the Labour Court, in which case he will act as prosecutor. He will also act as a prosecutor in the Labour Court if the official who has been disciplined appeals against the agency's decision (this last rule, however, only covers cases which have been originally started by an Ombudsman). Still, the most frequent device used is a letter of admonition or 'reminder'. The Ombudsmen have no power to change a decision of a court or an administrative agency: their main weapon is the right to express their views on the question of whether the matter examined was handled and decided by the government official, board, agency or department in accordance with the law and in an appropriate manner.

The Ombudsmen may review discretionary decisions but do so only in exceptional cases. They need not wait for the exhaustion of other remedies available to the complainant before deciding to investigate a case. The Ombudsmen may, furthermore, call attention to defects in laws and suggest amendments or ask an administrative agency to change a practice. The Ombudsmen may make inspections of courts, police, army posts, prisons, prosecutors, agencies and other government institutions. Each year the Ombudsmen must submit a report on their activities to Parliament, which is firstly considered by the Constitutional Committee of Parliament, and then by the Riksdag itself.

THE NEW ORGANIZATION

In May, 1972, the Riksdag appointed a committee to examine the Ombudsman institution, its principles and problems.

The committee in April, 1975, presented its report "The Office of the Parliamentary Ombudsmen - Duties and Organization". Among its recommendations were: authority to dismiss complaints if of minor importance; a complaint of a matter more than two years old should not be handled unless an inquiry is essential in the public interest; reduction of inspections; authority where an agency has acquitted the employee in a disciplinary case to take the case to court regardless of whether the Ombudsman initiated the case or not; re-definition of sphere of supervision; restructuring of the Office with four Ombudsmen, one of whom would be Director of the Office, with no Deputy Ombudsmen, and each Ombudsman would still be responsible for his own sphere of supervision; executive employees should have the right to have certain decisions delegated to them; brochures should be published describing the work; the annual reports should be presented to the Riksdag no later than February 1 of each year, and an account of major decisions should be made every spring and autumn. The committee also made the following general observations:

...in many respects the Swedish Ombudsman system is unique. Its wide sphere of supervision, the inspections done by the Ombudsmen and the powers they have to prosecute public servants under the Swedish Penal Code gives the Swedish Ombudsmen much greater powers of control than Ombudsmen in other countries, with the exception of Finland. The Committee also has the impression that investigations carried out by Ombudsmen in countries outside the Nordic area concentrate more on the injustice sustained in consequence of maladministration, whereas the Swedish Ombudsmen concentrate more on investigating whether a particular government employee has made a mistake or been negligent in the exercise of his duty...Ever since its inauguration the Office has been an office of public prosecution and the main aim of investigations done by the Ombudsmen is to find out if individual public servants have failed in the performance of their duties, as in principle every public official in Sweden is legally responsible for erroneous decisions and acts...(Source: Summary in

English of Ombudsman Committee Report,
Sartryck ur SOU 1975: 23 JO-ambetet-
uppgifter och organisation, pp. 229-
233).

The Committee presented a draft instruction for the Ombudsmen and proposed certain amendments to legislation. The Ombudsmen were invited to give their opinions on the report, and a number of state agencies and private organizations were also asked for their comments. In addition, Private Member's Bills dealing with proposed reforms of the Office were submitted to the Riksdag for scrutiny. The whole matter was then considered by the Standing Committee on the Constitution, whose report, which largely endorsed the reforms recommended by the Ombudsman Committee, was accepted by the Riksdag in November, 1975. The greater part of the new rules became effective on January 1, 1975, and the rules concerning the organization of the new four-Ombudsman Office came into force on May 8, 1976, one day after the election of the new Ombudsmen by the Riksdag.

From a practical point of view it can be said that the Ombudsmen's field of supervision will be much the same as it has been up to now. Under the new Instruction the Ombudsmen will retain their power to institute criminal proceedings against officials found at fault. Due to the reform of the Penal Code, however, in the future prosecutions will only be possible when grave faults have been committed. The Riksdag strongly underlined the importance of the citizens' access to the Ombudsmen. The Investigating Committee had proposed specific rules saying that the Ombudsmen should dismiss complaints under certain conditions. No such rules were accepted by the Riksdag (except that complaints about what has happened more than two years ago may be dismissed without investigation). It was, however, understood that the Ombudsmen may, at their own discretion decide which they feel are not worth following up. As to the inspections, the Riksdag said that their number should be cut down, especially the number of routine inspections, i.e. those undertaken for no special reason.

While there used to be three Ombudsmen and two Deputy Ombudsmen, the new organization is comprised of four Ombudsmen, and no Deputy Ombudsmen. One of the four Ombudsman, Mr. Nilson, is called the Administrative Chief. He is responsible for the administration of the office and determines the main orientation of its activities. All four Ombudsmen have separate spheres of supervision. The Investigating Committee had proposed that an Ombudsman should have the right to entrust his subordinate officers with the deciding of cases of minor importance. This proposal, however, was not accepted by the Riksdag. So the rule will remain that only an Ombudsman is authorized to sign a decision. The yearly report to the Riksdag under the new rules covers the fiscal year (from July 1 to June 30) and shall be presented not later than October 15. The Ombudsmen are also authorized to publish interim-reports on more important cases.

TANZANIA

Name of Office	Permanent Commission of Enquiry
Relevant Legislation	Interim Constitution, 1965 Permanent Commission of Enquiry Act, No. 43, 1966 Permanent Commission of Enquiry Act, No. 26, 1966 Interim Constitution of Tanzania (Amendment), No. 8, 1975
Present Incumbent	Mr. Ackland L.S. Mhina (Chairman)
Term of Office	2 years (may be re-appointed for 1 additional term)
Address of Office	S.L.P. 2643 Dar Es Salaam Tanzania
Population of Jurisdiction	14,000,000
Staff Complement	5 (on Commission)
Average Number of Complaints per Annum	Approximately 2,000

Descriptive Analysis

The Interim Consitution of 1965 made provision for the establishment of a Permanent Commission of Enquiry and in the next year a Permanent Commission was created and invested with investigatory and reporting powers. The Commission, as it is presently constituted, consists of the Chairman and for commissioners. The Commission concept in Tanzania is akin to the setup of the same office in Zambia. The Commission in Tanzania is assisted by administrative support staff as is the case in Zambia.

The Interim Constitution provides in Section 67(1) that the Commission may enquire into "any conduct of any person to whom the Section applies in the exercise of his office or authority, or in abuse thereof". The interpretation section does not define the word "conduct" but the act or omission, etc. to be investigated must be administrative in its nature. That is to say, it must have been conduct taken in the course of some administrative decision or activity. Secondly, the complained-of activity must be confined to one of the listed authorities or agencies in the schedule appended to the Act.

Section 67(2) of the Constitution specifically provides that the Commission shall investigate the conduct of any person whenever it is directed to do so by the President and in so doing it may "make such enquiry in any case in which it considered that an allegation of misconduct or abuse of office or authority by any such person ought to be investigated." The results of any investigation must be reported to the President along with the Commission's conclusions and recommendations. The Commission is required to submit an Annual Report and the Report is laid before the National Assembly.

The political structure of Tanzania is of a one-party nature, as is the situation in Zambia, and it is therefore interesting to notice Section 67(4) of the Constitution. The

subsection attempts to define those persons over whom the Commission has jurisdiction in any given case. The subsection reads as follows:

(4) This Section applies to persons in the service of the United Republic, persons holding office in the Party, the members and persons in the service of a local government authority and the members and persons in the service of such Commissions, corporate bodies established by Statute and public authorities or boards, as may be specified by act of parliament, but does not apply to the President or the head of the Executive for Zanzibar (who is the President's chief assistant).

It is a novelty to see an Ombudsman-type commission having jurisdiction over the office-holding members of the country's ruling and only political party. Section 10(2) of the Act gives further indication of those persons and/or agencies falling within the purview of the Commission. It makes reference to the right of any "person, department or scheduled organization" to make reply if the Commission is about to arrive at a conclusion adverse to that person, department or scheduled organization. A "department" is defined as "...the office of the President of the United Republic, a Ministry or independent department of the government, the Party, or a local government authority."

The Commission's jurisdiction is circumscribed by Section 67(5) of the Constitution which reads:

(5) Nothing in this Section or in any Act of Parliament enacted for the purpose of this Chapter shall confer on the Permanent Tribunal any power to question or review any decision of any Judge, Magistrate or Registrar in the exercise of his judicial functions or any decision of the Tribunal established by law for the performance of judicial functions in the exercise of such functions.

The administrative decisions of members of the judiciary are considered to fall within the ambit of the Commission's jurisdiction.

Complaints made to the Commission may be submitted in writing, or orally, and the Commission is empowered to investigate of its own motion. In any case, the President can direct that there be no investigation and the President may prohibit the giving of any information or the answering of any question in cases where he adjudges that it would prejudice the security, defence, or international relations of Tanzania.

U.S.A. - STATE OF HAWAII

Name of Office	The Ombudsman
Relevant Legislation	The Ombudsman Act as amended in 1974 and 1975.
Present Incumbent	Herman S. Doi (re-elected to a second term beginning July 1, 1975).
Term of Office	6 years
Address of Office	Kekuanaoa Building 4th Floor 465 South King Street Honolulu, Hawaii 96813 U.S.A.
Population of Jurisdiction	865,000
Staff Complement	10 exclusive of the Ombudsman
Average Number of Complaints per Annum	Approximately 1,500

Descriptive Analysis

The office of the Ombudsman was created in Hawaii in 1967 and the Act was amended in 1974 and 1975. Herman Doi was appointed Ombudsman on July 1, 1969 and is now serving his second term of six years in this post. Mr. Doi served as the Director of the Legislative Reference Bureau prior to his appointment as Ombudsman. The Legislative Reference Bureau was attached to the University of Hawaii and did such things as study alternative forms of legislation and suggest legislative proposals and draft legislation.

The staff of the Ombudsman's office at the present time numbers 11 persons inclusive of Mr. Doi. Seven of these persons are professionals and four are secretaries. Of the professionals, three, including Mr. Doi, are lawyers, two have a Masters degree in Business Administration, one has a Masters degree in Social Work and one has a Masters degree in Political Science. Virtually none of Mr. Doi's staff came to his office from the civil service. Mr. Doi advises us that with respect to seniority and benefits that accrue as a result of work in the public service, this must be forfeited if someone leaves the public service to come to work in the Ombudsman's office but once someone is hired by the Ombudsman's office and serves in that office they may accumulate the same benefits and seniority as would apply were that person employed by the public service.

The Hawaiian Ombudsman has jurisdiction under Section 96-6 of the legislation, "to investigate the administrative acts of agencies". Acts considered to be "appropriate subjects for investigation" are contrary to law, unreasonable, based on a mistake in fact, performed inefficiently, or otherwise erroneous (Ombudsman Act, Section 96-8). The jurisdiction of the Ombudsman does not, however, include: the judiciary, the Legislature, the governor, a "multistate government entity", or the mayors or councils of the various counties (Section 96-1). Within

Herman Doi's jurisdiction are complaints against municipal authorities which, properly speaking in the Hawaiian context, are known as county governments. That is to say, the county of Honolulu comprises the island of Oahu in its entirety and although it would seem there are different urban areas they come under the same local administration, all of which is subject to Herman Doi's jurisdiction. Mr. Doi advised us that each time a Mayor was elected in one of the counties he made it a point of meeting with him and each of the heads of his various departments.

Complaints are received in the Ombudsman's office in Honolulu either in writing, by telephone or by the complainant attending in person. Complaints coming into the office are invariably handled by one of the professional staff. Mr. Doi advised us that one of his professional staff is assigned to be the complaint taker for each day of the week and that individual will hear all complaints coming into the office that particular day. Mr. Doi does not require that complaints be in writing and in fact a large number of complaints are taken over the telephone, followed up with 'phone calls and resolved without there ever having been an exchange of correspondence either between the office and the complainant or the office and the governmental agency involved. There are several reasons for this decision; in the first place, informality is the norm in all things in Hawaii. In addition, Mr. Doi advised us that he did not want

to feel that he was militating against those who were not educated enough to be able to put their thoughts down in writing. If a telephone complaint is to be long distance from another island, the procedure is to have the person call collect, leave a name and number and he or she is then called back by the professional person taking complaints for that day via the government tie line. Records of every call are kept for submission to the government on a monthly basis. The comments regarding telephone complaints never being confirmed by correspondence do not apply if the complaint is a serious matter or is very complex. In this instance, an acknowledgement will go out to the complainant in the form of a copy of the Ombudsman's letter which is sent to the governmental agency involved. Written complaints will be acknowledged in the same manner, that is, by a copy of the letter to the agency involved unless this cannot be done in three days in which case a form letter is sent to the complainant acknowledging receipt of the complaint. The office is open between 7:45 a.m. and 4:30 p.m. and if someone phones after 4:30 p.m. a message can be left on a recording system and he will be called back at 7:45 the next morning. Complaints obviously outside the Ombudsman's jurisdiction are directed to the appropriate agency and although this advice is not confirmed by way of a letter to the person making the enquiry it is a matter of record in the Ombudsman's office.

Herman Doi is always apprised of the status of complaints under investigation in his office. He opens the mail and sees all the written complaints. Complaints which have come in by way of telephone call or walk-ins come to his attention by way of his weekly meetings with the various professional members of his staff at which time they are required to report to him on all complaints outstanding and being investigated by them.

The decision regarding whether or not a complaint falls within the jurisdiction of the Ombudsman's office is left up to the professional member of staff receiving the complaint

although that person may require some guidance from Mr. Doi himself. George Holt, the first assistant, is also available for consultation in the event a question arises as to jurisdiction. Again, all decisions as to jurisdiction come to the attention of Mr. Doi on the occasion of his weekly meetings with the members of his staff.

The professional member of staff who receives a complaint is responsible for following that complaint through to its conclusion. That is, that professional member does all the investigation on that complaint. No formal letter is sent to the head of the agency complained of; rather, a brief report on the gist of the complaint is directed to the person most closely responsible in the department. Mr. Doi advised us that he had decided against enclosing an actual copy of the complaint received in his office as these letters more often than not contain inflammatory matters which might have the effect of alienating the department involved and, more importantly, he felt that to enclose the actual copy of the complaint received might give the impression that his office was acting as the advocate of the complainant's position and he makes it very clear that this is not the case and that he is merely bringing to the attention of the department the allegations of the complainant. Once a report is received back from the agency involved a copy of this report is sent to the complainant. From the foregoing, it will be obvious that a decision has been made not to have the staff specialize in any way and we were advised that this was done for two reasons. First, Mr. Doi feels that if a professional member of staff specializes in one area he becomes particularly difficult to replace should he decide to leave and secondly it may become somewhat repetitive to always have to be dealing with the same kind of complaint. There is no formal system of correspondents within the departments of the government and each staff member will have his or

her own system of contacts for getting action on complaints within their aegis. It can therefore be seen that the Ombudsman is kept perpetually apprised of the status of a complaint by weekly meetings and the complainant is also kept in touch with the progress of an investigation by the copies of documents being forwarded to him. It should be noted at this point that the complainant is asked to advise the Ombudsman if in fact the response received from the department is incorrect factually and if this is the case, the Ombudsman's office will not rely on the report but actually go to the department's files and decide for themselves what the facts of a particular matter are. Mr. Doi advised us that he very seldom has to go and peruse the files in a department.

By way of general approach to his recommendations, we were advised that Mr. Doi has tried various alternatives. In the first instance, he tried making recommendations that he felt were right and proper without any consultation with the department involved. This caused some difficulty in the sense that some of his recommendations were not acted upon. He then attempted drafting his own bills and attempting to have them introduced by various members of the legislature. This also proved unworkable. The final tact taken by Mr. Doi has been to meet with the department that would be affected by a recommendation he has in mind and ask them about the sort of changes they might recommend to resolve a situation that he has found requires attention; that way he can get the department's support for the changes that he wants effected in any event.

When an investigation is complete, usually when the report is received back from the department, the member of staff responsible for the file will make a recommendation to Mr. Doi regarding disposition. As already mentioned, where this recommendation will involve a finding of justified and a recommendation regarding a major change on the part of the department's policies or procedures, Mr. Doi will make every effort to arrive at

a meeting of minds with the administrators. He advised us that in the years that he has held office he has never yet had one single situation where he came into confrontation with the administrators. The complainant is not advised of every single recommendation made as a result of the finding on the complaint but, if a complaint is justified, he may be advised that a deficiency has been discovered and that this has been taken up with the agency involved. Files again are never closed without Herman Doi's knowledge and approval.

There are no branch offices in the Hawaiian Ombudsman's operation despite the fact that Hawaii is spread over a number of different islands. On the other hand, every 6 to 8 weeks a member of the staff goes to the other islands and sees persons who have arranged appointments with the Ombudsman through the cooperation and good offices of the Department of Education. The Department of Education is a government agency within Mr. Doi's jurisdiction but he said that the decision was made to utilize their services in order to cut down on expenses and it was thought that the Department of Education was the least objectionable organization. When one of these visits to another island is contemplated advertisements are placed in their local newspaper to advise the public. Again, it should be borne in mind that only approximately 200,000 persons reside in these islands outside the Island of Oahu. In order to increase the awareness of the Ombudsman's office pamphlets are distributed via legal aid offices and through community groups which go on to describe these arrangements for Mr. Doi or a representative of his office attending at the other islands.

Mr. Doi was particularly adamant that an Ombudsman's office must work efficiently. This is relevant to the question of publicity and awareness, for, as he stated, "publicity must be balanced against the staff's capability". He went on to say that "the best publicity that an Ombudsman's office can have is

to process the complaints received". On the other hand, it was his view that "the worst criticism that can be made of an Ombudsman's office is to have the public say that they went to the Ombudsman and nothing happened".

U.S.A. - STATE OF IOWA

Name of Office	Citizens' Aide
Relevant Legislation	Citizens' Aide Act (Amended 1974 to provide for Deputy for Corrections) and Rules
Present Incumbent	William P. Angrick (appointed April 1, 1978)
Term of Office	4 years
Address of Office	515 East 12th Street Des Moines, Iowa 50319 U.S.A.
Population of Jurisdiction	2,870,000
Staff Complement	7 exclusive of Citizens' Aide
Average Number of Contacts per Annum	Approximately 2,700

Descriptive Analysis:

The objectives of the Citizens' Aide office, as delineated in the Rules promulgated with reference to the Citizens' Aide Act, are:

- (1) To accept, investigate and render an opinion or recommendation on a complaint from a member of the public about an action or inaction of an executive or administrative agency of the state and local government in Iowa; and,
- (2) To improve administrative practices and procedures. (Rules promulgated pursuant to Chapter 17A of the 1975 Code of Iowa; Chapter 210-1.1)

In order to accomplish these objectives, the Citizens' Aide is empowered to "investigate, on complaint or on his motion, any administrative act of any agency", provided that such an administrative action might be contrary to law, unreasonable, unaccompanied by an adequate statement of reasons, etc. (Chapters 601 G.9 and 601 G.11 of the Citizens' Aide Act). He is also given the broadly defined power, unique among American Ombudsman, to "concern himself with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur" (601 G.11).

There are, of course, limits to the scope of the Citizens' Aide's jurisdiction. The term "agency" "means all government entities but it does not include:

- (a) Any court or judge or appurtenant judicial staff.
- (b) The members, committees or permanent or temporary staffs of the Iowa Assembly.

(c) The governor of Iowa or his staff.

(d) Any instrumentality formed pursuant to an interstate compact.

In addition, under the Rules (601 G.1) he shall not investigate "when there is no objective standard upon which an opinion might be formulated; for example the question of whether an arrest should have been made or a student should have received a different grade". Nor may he investigate "if the complainant has available another remedy or channel of complaint...eg. an internal grievance mechanism" (Rules, Chapters 210-2.2(1) and 210-3.2).

If a governmental agency does not take corrective action despite a recommendation by the Citizens' Aide, he has several options:

He may publish his conclusions, recommendations and suggestions and transmit them to the governor, the general assembly, or any of its committees...Anything so published may at the same time be made available to the news media or others.
(60 G.17)

The committees of the assembly referred to above are the various standing committees that deal with specific areas or agencies. Thomas Mayer, when the Citizens' Aide, noted the importance of this role as a liaison between the legislature and the Citizens' Aide. Other contacts with the Assembly occur at the time of the submission of the Annual Report and when, in accordance with Chapter 601 G.16 of the Act, he notifies the Legislature "concerning desirable statutory change".

Complaints and their Processing:

Although provision is made for complainants to present their case by mail or in person, fully two-thirds of the grievances filed in the office enter by telephone. The ability to call the office toll-free from anywhere in the state is one of the reasons

Mr. Mayer cited as leading to such a high percentage of telephoned complaints.

Once the facts of a case are made known to the office, its jurisdiction is determined. Mr. Mayer thought it important that "advice as to how to proceed be given in non-jurisdictional matters", though he noted that "the Citizens' Aide does not give legal advice" (Annual Report, 1974, pp 6-8). Once a complaint is found to be within the competence of the office, its urgency is assessed; if time is found to be a factor, every effort is made to expedite matters.

The Citizens' Aide does not initiate many complaints. Mr. Mayer explained that "in order to become quite active in initiating investigations, the Ombudsman would have to do so at the expense of individual complaints". He felt that by concentrating more on ad hoc inquiries, he could serve the people better.

The organization of the office has to a certain extent "been determined by the presence of minority groups." There are two specialists--the two most recently added positions in the office. One specialist, the Deputy for Corrections, deals with grievances received from inmates of correctional institutions, as required under the 1974 Amendment to the Citizens' Aide. The second specialist, for Indian Affairs, is an experimental position which was established to "assess and meet the needs of American Indians living within the State of Iowa." There has not as yet been sufficient time to completely evaluate the effect of these specialists on the people involved, but the "preliminary indications...are positive" (Annual Report, 1975 p.9).

Part of success of the Citizens' Aide Office has been due to the good relationship that exists with the various organizations and agencies, particularly at the state level. (Any reluctance to co-operate on the part of certain municipalities,

which are also under the office's jurisdiction, is thought to be due to their number and to the distances separating them from the office). In fact "in some cases, agencies have themselves contacted the Citizens' Aide seeking advice on pending matters". Mr. Mayer considered this indicative of the fact that "the office of the Ombudsman (sic) is truly an intermediary serving both the people and the government" (Annual Report, 1975, p.75).

VIII A MODEL OMBUDSMAN'S OFFICE FOR ONTARIO
- CONCLUSIONS AND RECOMMENDATIONS

"...THE OMBUDSMAN TO MY MIND MUST BE
ABLE TO SAY, AND ADEQUATE PROVISION
MUST BE MADE FOR THE OMBUDSMAN TO
SAY EFFECTIVELY, ...I AM A HUMAN
BEING AND NOTHING HUMAN IS FOREIGN
TO ME."

His Eminence George Bernard
Cardinal Flahiff, on the
occasion of the Canadian
Conference of Legislative
Ombudsmen, September 12, 1977.

A MODEL OMBUDSMAN'S OFFICE FOR ONTARIO
CONCLUSIONS AND RECOMMENDATIONS

1. Publicizing the Office and its Function

In the chapter dealing with the hearings conducted throughout the province mention was made of the fact that some considerable degree of confusion existed on the part of the public concerning the precise limitations on an Ombudsman's ability to investigate. Similarly, the continuing significant proportion of complaints and inquiries received in the office falling outside the office's jurisdiction would indicate that the concept of the Ombudsman is neither universally known nor understood in Ontario. To anyone with any familiarity with Ombudsmanship this situation comes as no surprise; the literature on the subject and the experience of other offices confirm without exception that such has uniformly been the case wherever an Ombudsman's office has been introduced. Indeed, the experience elsewhere goes on to indicate that those least likely to know about the existence of the Ombudsman, not to mention his capacity to assist them, are most likely those at the lower end of the socio-economic scale or, in other words, those least likely to be in a position to do anything on their own to have their grievance rectified.

It is to the credit of the Members of the Legislative Assembly that in the course of the debate on The Ombudsman Act, 1975 it was recognized that the Ombudsman would be required to perform at least an initial educative function. To this end the suggestion was put forward that the Ombudsman get out of his office in Toronto

and tour around the province explaining his mandate. This recommendation was acted upon to the extent that as of February, 1979 there had been a total of no fewer than 123 attendances by representatives of the Ombudsman's office in centres throughout the province. These hearings concurrently served a number of useful functions. Primarily, of course, they served as a convenience to those persons who wanted to utilize the services of the office but were unwilling to attend at the office's facilities in Toronto and for their own reasons were unable or unwilling to communicate with the office by telephone or correspondence. But in addition the various news media very frequently took an interest in these attendances by Ombudsman staff members and reports of this nature serve to reinforce an awareness of the Ombudsman concept. As well, these occasions were utilized for the purpose of having members of the staff speak to service clubs, university audiences and student gatherings in neighbourhood high schools, which contact hopefully not only familiarized those attending with the Ombudsman's function but in due course other family members as well. As of the end of 1978 it is calculated that some 90,726 persons had been advised of the Ombudsman's function on a personal basis. Because these speaking engagements were arranged in conjunction with the hearing schedules they did not interfere with the office's day-to-day routine. The very numbers of complaints received in the office of the Ombudsman, 20,485 as of September 30, 1978, as well as 24,000 informal inquiries for which no file was opened, are indicative of the extent to which the Ontario public is becoming aware of the office, an awareness which in large measure must be attributed to this programme of hearings. It is a programme the usefulness of which is now without question and which should be perpetuated on a regular, continuing basis.

One method adopted in a number of other jurisdictions for acquainting the public with the Ombudsman's function is the preparation and distribution of brochures describing the office's jurisdiction. These brochures can be distributed throughout the province in the same way as pamphlets and brochures produced by other ministries, boards and agencies of the province. It is my view after three years of experience that every possible effort should be expended attempting to bring home to the public the nature of this agency created for their benefit and accordingly the recommendation was made in the Fourth Report of the Ombudsman that such a brochure be created and distributed. In the same Report it was pointed out that the office also intended to produce a film which would explain the jurisdiction, role and operation of the office of the Ombudsman in Ontario. This film would be comparable to similar films released by the Ministry of Correctional Services and the Ministry of Natural Resources. I remain convinced that a film of this nature would greatly enhance the office's ability to explain to the citizens of Ontario the role of the Ombudsman and how the office can serve them.

Concerning proposals such as the foregoing the allegation could be made that the office is in effect "drumming up business". This is a charge to which in my view any Ombudsman should be more than anxious to plead guilty. The office of the Ombudsman is a novel institution not just for Ontarians but for all Canadians; yet the office represents such an enormous capacity to assist individuals in need that it should never be allowed to lie dormant. A potential complainant should never go without assistance because of ignorance

of what the office can do. In order that this be the case people do not just need to be educated, they have to be reminded of this service that is at their disposal, for which, after all, they are paying the cost.

2. Access

Assuming for the moment that attempts to make the public aware of the function of the Ombudsman are successful, regardless of the degree to which this is effective, the next most important question to consider is whether the Ombudsman's office is accessible to those individuals who wish to avail themselves of its services. And upon consideration, the foregoing resolves itself into a number of different questions as opposed to one single question; that is to say, to name but a few, is the Ombudsman's office accessible in terms of location, is it accessible in terms of hours of operation, and is it accessible in terms of language?

This question of access was a matter of principal concern to the members of the Legislature at the time the Ombudsman's legislation was debated. At that time there were a number of those who spoke on the Bill who urged the Ombudsman to consider regional branch facilities and to get out and go around the province, to give some thought to "a mobile department" in the words of Mr. Laughren, rather than remain ensconced in his office in Toronto. This is a sentiment which one may find echoed elsewhere in the debates which took place in other provinces, Alberta being one example. Similarly, it is a theme that was taken up on the occasion of the public hearings around the province. In Northern Ontario in particular the Ombudsman was urged in every single hearing to consider the possibility of a regional office or offices, perhaps in conjunction with a programme of hearings conducted in the North, "a roving office, an office that will move, from community to community" as advocated by Mr. Deibel in North

Bay. While there was no consensus as to where any such office or offices should be located, nor indeed as to the nature of such an office, be it a separate, perhaps in the nature of a storefront operation, or in conjunction with the facilities of the Ministry of Northern Affairs, there was unanimous agreement on the need for regional facilities.

As indicated in the Fourth Report released July 24, 1978, the concept of branch offices has been tried elsewhere, often with considerable success. In Canada, the Quebec office has a branch facility located in Montreal; the Alberta office, centered in the capital city of Edmonton, has a branch office operating in Calgary; in Saskatchewan the central office is located in Regina, the capital, while a branch office has been established in Saskatoon. Experience in this regard is not confined to Canada. Looking internationally, jurisdictions such as France, Israel and New Zealand have elected to decentralize their operations through the use of branch facilities.

As I went on to indicate in the Fourth Report, after carefully considering this whole issue I have arrived at the conclusion that the function of the Ombudsman's office in Ontario would be assisted by the creation of a branch office to serve that segment of the population located in the northern areas of the province. By way of background, it is important to underline that since the inception of the Ombudsman's office in Ontario, Northern Ontario has used the Ombudsman's office more than the rest of the province. The Ontario North Region, which comprises ap-

proximately 9.4% of the province's population, accounted for 478 or 16% of the complaints received in the office in the period extending from October 1, 1977 to March 31, 1978 for which a geographical determination was possible. Northern Ontario consistently has the highest complaint-to-population ratio in the province. The office receives at least 50% more complaints from the North than one would expect on a population basis alone.

The question of regional facilities for the office of the Ombudsman is an issue on which the views of literally hundreds of people from every section of the province have been canvassed exclusive of the representations made to me in the course of the debates and on the occasion of the public hearings. Other than in the North I am not persuaded that the same need exists for a regional facility primarily because I am not convinced that the citizens resident in these other parts of the province feel as isolated from the seat of government as do those in the North. I was particularly impressed by the number of persons from South-western and Eastern Ontario who disclaimed the need for a regional facility in their area of the Province but lent their support to the creation of such a facility to serve the needs of the people of Northern Ontario. In addition, the interests of economy must also be borne in mind and whereas the addition of a single permanent branch facility with satellite offices should not entail significant budgetary additions, this could not be said to be the case if there were a number of such facilities established. As well, whenever branch offices are established there are inevitably problems of communication and while this will not pose a matter of major concern where it is a question of a single branch office, the potential advantage

could be outweighed by the administrative disadvantages in the event a number of branch offices were proposed.

As I stated in the Fourth Report, my view is that a branch facility should be made available in the North as soon as possible. I indicated in that Report that in my opinion a central office should be located in the City of Sault Ste. Marie with satellite offices at the outset located in North Bay, Sudbury, Timmins, Thunder Bay and Kenora. The staff required to serve these new facilities would be something that could be determined after a study of the present caseload to be serviced by them. This concept of a central branch office with "satellites" reporting to it is one that was initially put forward by Mr. Terence Murphy, Q.C., a former Member of Parliament, on the occasion of the first hearing held in Sault Ste. Marie in 1976. While I am attracted to this suggestion I should stress that final decisions as to the location of the central branch facility and any satellite reporting to it should appropriately only be made after consultation with the people of the North, the M.P.P.'s whose constituencies lie in Northern Ontario as well as the respective Mayors and Reeves of all northern municipalities.

Perhaps some reference should be made at this point concerning the suggestion put forward from time to time in terms that these branch facilities might be established as storefront-type operations. This is a concept that has received some considerable attention in the literature on the subject of the Ombudsman and I might refer specifically to Professor Lance Tibbles who has indicated that in his view a downtown office in a centrally located building projects the

wrong image for an Ombudsman - according to Professor Tibbles such an office would fail to attract the poorer sections of the community who stand to benefit most from the office. This is a question which I confronted at the time of the initial establishment of the Ombudsman's office in Toronto. At the heart of my thinking was the fact that the Ombudsman's office was created to serve all citizens of the province regardless of their economic standing. I was mindful of the fact that a storefront-type of office, while comfortable for some, is uncomfortable for others. In the result, I determined that the office should take a form comparable to the public offices of other ministries and agencies of government, similarly appointed and equipped. Part of my thinking at the same time was my determination that the Ombudsman's office should not be seen as an extension of the Legal Aid Plan and created exclusively for those unable to finance an alternative remedy. Happily the experience of the office has not borne out the fears expressed by Professor Tibbles but concurrently white collar workers have felt equally free to make liberal use of the office's facilities. Accordingly, it follows that it would be my recommendation that any branch facilities be housed in premises along the lines of space occupied by other government offices in the area, an obvious example being offices of the Ministry of Northern Affairs.

While I have indicated it to be my view that permanent branch facilities are not required other than in the North, I wish to stress that this statement is made on the assumption that

the programme of regular visits currently under way is perpetuated. As mentioned earlier, these tours were initially commenced not only to familiarize the citizenry with the function of the Ombudsman but also in response to the admonition on the part of those participating in the debate in the Ontario Legislature that the Ombudsman should get out of the office and meet the people of the province outside of the capital. The philosophy implicit in this suggestion which has been adopted in the organization of the office is that the Ombudsman's function should be taken to the people rather than having the people come to the office. It is my conviction that these tours remain one of the most important endeavours undertaken by the office and are integral to the office's relations throughout the province. As of February, 1979 it has been indicated that there have been a total of 123 such hearings in every conceivable centre in the province. The hearings are organized such that those in the location to be visited are advised well in advance of the intended visit and told that members of the office will be present for the purpose of sitting down with them and interviewing them with respect to any complaints they might have. Those living in the community or the surrounding area with ongoing complaints in the office are contacted and an appointment arranged for an investigator to bring them up-to-date on the status of their complaint. The news media invariably takes an interest and this coverage serves to further inform the public concerning the Ombudsman concept. The Members of the Legislature whose constituencies are visited

during these hearings are always invited to attend and very often do so unless their legislative duties make it impossible. It is the practice of the Ombudsman's office to forward to the Members of the Legislature a detailed report concerning the number of complaints received from the citizens residing in their constituency and the nature of their complaints. In cases where the permission of the complainant is received the office goes on to identify the constituent's complaint to the office. In the first four reporting periods approximately 15% of all complaints received in the office came from complainants who attended these private hearings and this figure alone confirms in my mind the success of this programme. In addition, the relatively even distribution of complaints received in the office proportional to the population, having regard to the remoteness of some portions of the province, is without a doubt in my view due largely to the success of these tours.

In addition, there are other less direct benefits which accrue to the Ombudsman's office by virtue of this programme; not only does the Ombudsman get out of the office and meet with those segments of the province's citizenry with whose problems he is required to deal on a day-to-day basis, but also, and equally as important, it gives the staff of the Ombudsman's office an opportunity to meet on face-to-face basis with the constituents whom they serve and allows them to come to know in a personal manner the problems experienced by those within their jurisdiction. All of these advantages come about at a cost far less than would be the case if a number of permanent regional offices were

established around the province. For these reasons I became convinced of the value of these hearings very early in the experience of the Ombudsman's office and went so far as to go on record on the occasion of the public hearing in London, Ontario on March 19, 1976 with the pledge that there would always be representatives of the office of the Ombudsman touring around the province in the future for the convenience of complainants who wished to come to the office with whatever requests for help that they might have.

The establishment of a regional office and the continuation of the programme of visits throughout the province do not in and of themselves serve to solve all of the problems of access to the office from the standpoint of geography. In the first place, we have a native population of Ontario which at the present time exceeds some 60,000 persons. A large proportion of this group finds itself isolated not only geographically but also socially. It would be an understatement to say that this group views with an ambivalence heavily larded with suspicion this institution created by an alien government supposedly to fight that same government on their behalf. For this reason it was decided that a particular effort should be expended to communicate the function of the office to native people if one was to realistically maintain that the office's services were equally available to them.

The responsibility for this area of the office's operations was assigned to Mr. Gilles Morin, at that time Director of Rural, Agricultural and Municipal Services and

currently the Director of Regional Services. Early in 1977 meetings were arranged with the four Indian Associations to which the various bands belong: the Union of Ontario Indians, the Association of Iroquois and Allied Indians, the Treaty Nine and Treaty Three Organizations. It was determined that there are a total of no less than 112 separate Indian reserves and communities to be found within the province. As of January, 1979 69 of these reserves and more than 20 unorganized communities had been visited and it is projected that by the end of June, 1979 all reserves will have been visited at least once and some a second time. At least a half day is devoted to each reserve and in some cases a whole day if the need is evident. A similar schedule is adopted in dealing with the unorganized communities. In most settlements a meeting is arranged with the chief and the council as well as the band employees and members on the occasion of which the overall programme is explained as is the function of the Ombudsman. Notwithstanding that the Ombudsman's jurisdiction is outlined staff members will inevitably be approached about matters which concern either the federal government or the private sector. Although it is made clear that the Ombudsman's office is unable to take any concrete action on concerns of this nature, these recurring concerns are always relayed to the responsible party. In order to assist in this effort mention should also be made of the fact that meetings have taken place with the various ministries, agencies, boards and commissions who have direct dealings with Indians and remote and unorganized communities to be briefed on the province's programmes which affect these people. Organizations

concerned in this regard include the Ministries of Natural Resources, Culture and Recreation, Transportation and Communications, and Northern Affairs, as well as those responsible for Northern Health Services, Community and Social Services, Alcohol and Drug Abuse, the Native Education Programme, Indian Policing Services and Ontario Hydro.

The success of the programme described above is impossible to demonstrate in terms of numbers and must remain to a large extent intangible. Nevertheless, in terms of the numbers of complaints received from Indians and, more importantly, in terms of the reception accorded the office's representatives on the occasion of these visits and in their dealings with Indians generally, the results have been extremely encouraging. It is fair to say this positive reaction is attributable almost exclusively to the efforts of Mr. Gilles Morin and I would be remiss in my duty if I did not single him out for special mention for his efforts in this regard. In my view a programme such as this is of utmost importance to the credibility of the Ombudsman's office and provision should be ensured for its continuation and, indeed, its extension.

Native peoples are by no means the only persons residing in isolated communities in the province, although it is correct to say that for the most part any such community would be found in the northern part of Ontario. Often accessible only by air, these communities find themselves particularly isolated in the long winter months of the year. While communication with officials

of Government may not be an every day affair with the residents of these communities, this is not to say that they do not have complaints about the administration of the provincial government from time to time and the Ombudsman's office should make itself as accessible to them as to the other citizens of the province. One of the problems is that the residents of these communities are often unsophisticated and unaccustomed to registering a formal grievance and may be so unfamiliar with the jurisdiction of the Ombudsman that they do not know whether their problem is one with which he might deal. In some cases persons may even be unsure as to whether their problem deals with the provincial government. In respect to this category of potential complainants, I found attractive a scheme which has been successfully implemented in Norway.

The Norwegian office, which has been in existence since 1962, found that many complainants who were in doubt about whether the Ombudsman's office could help them in the matter of their complaints as well as many persons who were seeking assistance in formulating their complaints attended at the office in person. Those persons residing in the far north of Norway were obviously unable to attend personally at the Ombudsman's office to receive assistance in this manner and consequently a programme was implemented whereby persons seeking information in respect of a potential complaint could attend at the office of any lawyer practicing in the four counties where this experiment took place in order to obtain from that lawyer the same assistance which the office of the Ombudsman would extend to those attending its offices

in Oslo. In a sense the lawyers would be acting as intermediaries between the prospective complainants and the Ombudsman's office, but their services were restricted to essentially providing the complainants with information. Lawyers giving assistance in such cases act in the capacity of representatives of the Ombudsman's organization, not as advocates for the complainant. Their duty is to consult with the complainant, provide him or her with guidance as to whether or not the matter is one within the scope of the Ombudsman's jurisdiction, and, if the complainant wishes to submit a grievance to the Ombudsman, give him or her whatever guidance is necessary regarding what to include in the formal complaint and which documents to enclose. The lawyer is reimbursed for his services through the Norwegian Legal Aid System.

I find this idea appealing because in the initial period during which the Ombudsman's office is becoming established it will allow the office to draw upon the foundation of trust and confidence which lawyers serving those in remote communities have been able to build up. A complainant would in all likelihood feel more comfortable explaining his problem to a lawyer whom he has come to know through past dealings than by way of correspondence with a distant office located in Toronto. While I gave some thought to the possibility of reimbursing lawyers for any time they may be called upon to expend in this role as quasi-functionaries of the Ombudsman's office, it is my view that such a plan should be experimented with initially without any provision for compensation. In the first place, it is not known at this point in time to what extent this programme will be utilized by those in the areas to which it will apply. Secondly, I would think that any lawyer who

might be included in such a scheme would be more than happy to donate whatever minimal expenditure of time would be required on his part to provide assistance of this nature to those seeking it. After a period of experimentation the whole programme could then be reassessed both as to its utilization and as to the question of compensation.

Further, dealing with the question of the accessibility of the Ombudsman's office in terms of location, it is perhaps logical to deal at this point with the question of long distance telephone service. Regardless of where you might find yourself in the province, the Ombudsman is truly no further away than the nearest telephone. Assuming for the moment that one can overcome the problems of unfamiliarity with the function of the office, difficulty in defining the nature of one's problem and any natural reluctance to deal with public officials, it is no exaggeration that virtually any citizen of the province could then take matters up with the Ombudsman's office by way of the telephone. At the outset, a Zenith connection which would have allowed for long distance telephone calls to be made to the Ombudsman's office without any expense to the caller was not established, so as to allow a period of time during which the advisability of such a service might be considered. On the other hand, the Ombudsman's number was listed in every single telephone directory in the province and a procedure adopted whereby anyone calling the office by long distance was asked to give his or her name and telephone number immediately and the Ombudsman's office would then return the call by way of a government "tie-line". In light

of the experience with this system over the initial three years of the office's operation it is my considered view that a Zenith number would not be the subject of abuse by complainants and would be considerably more convenient for them, and I recommend its adoption.

Turning next to the question of the day-to-day administration of the Ombudsman's office, it goes without saying that the office cannot adequately serve all of the citizens of the province if it maintains the same hours of operation one customarily associates with a department or agency of government. This is a matter which was made the subject of a number of recommendations by persons appearing at the public hearings around the province. In a very real sense an Ombudsman is analogous to the Member of the Legislature who serves as a representative for his or her constituency on an around-the-clock basis. For this reason the office has as a matter of course made members of staff available on an after-hours basis to those persons who are unable to attend at the office of the Ombudsman during ordinary business hours. Similarly, when the office schedules a visit to a location outside Toronto the staff attending on such visits will make themselves available during the evening in particular so that everyone wishing to see a member of the staff may do so with a minimum amount of inconvenience. It goes without saying that staff members will invariably assist complainants to reduce their complaint to writing in the event they themselves are unable to do so. It was established as a

policy of the office that the main telephone line would be answered by staff members who would remain on duty on a rotating basis until 10:00 p.m. each weekday evening. Thereafter through the night and on Saturday and Sunday messages can be left with an answering service which is checked regularly by a staff member. It is conceded those requesting an interview after hours are a minority and the volume of calls received in the evenings and on the weekends is not large, but the principle is of importance in terms of the office being truly accessible to its constituents.

Also along the lines of making the office accessible mention should be made of the schedule observed by the office assigned to the Ombudsman and located in the Legislative Building. In recognition of the fact that the Ombudsman is the servant and officer of the Legislature an office facility was allocated to the Ombudsman in the Legislative Building, hopefully as a convenience to those Members who might wish to refer problems or constituents to the office. Aside from the volume of complainants which comes through this office, the presence of the Ombudsman's office in the Legislative Building is important in a symbolic sense in that it is seen there by the thousands of people who tour the Legislative Building annually and who come to associate this office with the Legislative Assembly. In fact the office has proved useful in that a significant number of persons attend initially at this office where they are provided with information and are sometimes interviewed before being referred to the main office located downtown. To ensure that no person will find that upon being referred to the former office

that it is closed, the office in the Legislative Building remains manned by a member of staff during whatever hours that the Legislature is in session. For example, if the Legislature sits at night a staff member remains on duty until the proceedings in the Chamber adjourn regardless of the hour.

At the outset reference was made to the fact that the Ombudsman's office should be accessible in terms of language. An Ombudsman is not realistically accessible to those citizens of the province who may have some difficulty with the English language if a complainant is required to use English in his or her communications with the Ombudsman's office. This is particularly the case with the francophone citizens of the province, many of whom do not speak English or are at least uncomfortable speaking English. This is a point which was stressed on more than one occasion during the debates on The Ombudsman Act, 1975. Just as one example of the extent to which this has proved to be the case was a private hearing in Hearst on which occasion 11 of 12 complainants wanted to be interviewed in French; in order to provide for this situation there are a number of francophones on staff in the office as well as an additional six persons who are fluently bilingual in English and French - fortunately four of the five staff members present for the hearing in Hearst were able to converse in French. In fact l'Association Canadienne Francaise de l'Ontario has expressed satisfaction and complimented the office on the degree to which the office's services are made available in French. In addition the office has been staffed such that there are members of staff fluent in a total of 18 languages other than English and French

including Italian, Portuguese, Greek, Polish, Ukrainian, Russian, Hungarian, Croatian, German and Czechoslovakian. Indeed it can honestly be said that there is scarcely a person in the province who would be unable to communicate with the office in his or her own native tongue.

There is one final matter which is of importance in considering access to the office of the Ombudsman. At its most basic, concern with access for each and every citizen of the province means concern about the Ombudsman being apprised of any and all grievances in his jurisdiction harbored by those resident in the province. Experience has shown that problem areas are sometimes defined in newspapers before and even in the absence of a formal complaint by a person aggrieved. Accordingly, it was my hope that a regular review of the various newspapers from all parts of the province could be instituted in order to ensure that any matters potentially of interest to the Ombudsman and within his area of competence become known to him, and if not made the matter of a formal complaint, then an investigation into the situation could be initiated on the Ombudsman's own motion. In fact the exercise of this power in the initial three years of the office's operation has been very much the exception rather than the rule. The simple reason for this is that it was always felt that rather than seeking out complaints to be initiated on the Ombudsman's own motion the office should concern itself first with those complaints registered with the office. But notwithstanding that this power will be reserved for the exceptional case the practice is a valuable one and certainly ought not to be allowed to lapse.

3. Staffing the Ombudsman's Office

There are many persons who entertain the notion of the Ombudsman as a single individual who sits in an office and receives complaints, calling his acquaintances in senior posts in the administration of government who instantly move to correct abuses as pointed out to them by him. In short, all activity in respect of the remedying of complaints stems from the personal intervention of the Ombudsman himself. The simple truth of the matter is, of course, that this is nothing more than sheer fantasy. Given the numbers of complaints that an Ombudsman receives, given the problems the Ombudsman has to overcome in making his office accessible to complainants, given the difficulties encountered in investigating many of the complaints that an Ombudsman receives and given the disagreements that sometimes arise as to whether there has been any wrongdoing at all on the part of the bureaucracy, not to mention all of the other multitude of demands made upon the Ombudsman's time, this concept of the office of the Ombudsman is simply absurd. Indeed, to perpetuate this myth of the Ombudsman single-handedly able to come to the assistance of a citizen in need when in fact that situation would present no safeguard at all is not only misleading but unfair.

It follows that the larger the jurisdiction, the larger the bureaucracy that falls within an Ombudsman's sphere of supervision, and the larger the bureaucracy the greater is the potential need for an Ombudsman. Ontario requires an Ombudsman more than Prince Edward Island simply because due to Ontario's size it is likely that a proportionally larger number of abuses will take place. Yet by virtue of its size Prince Edward Island lends itself

more readily to this idea of the Ombudsman single-handedly bringing to the attention of the legislature abuses occurring in the administration. Still, the fact that Ontario is large should not operate so as to preclude it from enjoying the advantages of the Ombudsman function, whether or not the Ombudsman personally is able to oversee the resolution of every single complaint.

One possible alternative might be to create a number of Ombudsmen in order to overcome this difficulty. Several arguments immediately suggest themselves in opposition to any such proposal; such a scheme would be expensive, it would add immeasurably to the confusion on the part of the public concerning the office, and such a "team" of Ombudsmen would lose the benefit one individual stands to gain from an overall view of the patterns of complaints in the aggregate. Another alternative is to build up an office to service a jurisdiction adequately under the responsibility of a single Ombudsman. For reasons already outlined, the personnel that staffs such an office simply has to be substantial. The staff has to be such that it can receive complaints, which often means going to complainants themselves, as is the case with complaints emanating from those in custodial institutions; the staff has to be adequate to investigate these complaints, resolve issues of jurisdiction, report upon investigations and follow up on recommendations. In plain terms, given the size of the province of Ontario, speaking both physically and in terms of its population as detailed in the Introduction, if one is going to pay more than lip service to the concept of an Ombudsman the staff must be large. The very creation of the Ombudsman

institution in Ontario, except to one prone to cynicism, presupposes that it is not to be a token but realistically structured so as to be properly able to survey the bureaucracy. In practice the operation of such an office may mean the loss of some of the "personal touch" which some of those writing on the concept seem to consider important but it is submitted that what is gained in terms of efficiency more than makes up for what may be lost in terms of the Ombudsman being unable to intervene personally in each and every instance.

Also, and equally important in terms of staffing, the creation of the office of Ombudsman presupposes that there will be confrontations from time to time; that is, instances in which the Ombudsman takes a position which the ministry or agency of government declines to accept and the issue becomes a matter upon which the Ombudsman feels compelled to report to the legislature. In these circumstances, and indeed, in all circumstances where the Ombudsman suggests a conclusion contrary to that reached by the agency of government concerned, there is a natural tendency on the part of the administration to look upon the Ombudsman's staff and "size them up" so to speak. What is their expertise? How exhaustively has the matter been investigated? If the Ombudsman's recommendation is resisted will he persist? When one considers the size, the skill, the funding and the expertise involved in every single ministry of government, it is obvious that in order to feel confident that it can stand its ground in any confrontation, the Ombudsman's office must not be a token or a minimal operation. Again, one cannot conclude but that the staff should be adequate and professional.

Obviously, an office structured in accordance with these principles cannot be done "on the cheap." Indeed, I do not think it an overstatement to say that an Ombudsman's office not properly budgeted, not properly staffed and not properly backed by those who brought it into being amounts to nothing more than a front and a facade. The public are led to believe that they have a crutch on which to lean when in fact they have nothing at all. This will come as no revelation to those with any familiarity with this subject. It may be seen at the heart of the philosophy upon which the Ombudsman institutions in Sweden and Israel are based, to name but two of the outstanding offices with which I am familiar. Professor Karl Friedman has indicated that for a government to understaff an office for reasons of economy is "shortsighted". In the debates in the Ontario Legislature the inevitability of a large office was acknowledged by Mr. Patrick Lawlor who went on to comment:

"It is going to cost a substantial sum of money to run this office, beginning with the Ombudsman himself and with the various types of experts he will require."

The budget approved for the Ombudsman's office in the present fiscal year is four million, one hundred and sixteen thousand dollars (\$4,116,000.00). The total budget of the Province of Ontario for the same fiscal year is fourteen billion, five hundred million dollars (\$14,500,000,000.00). The portion allocated the Ombudsman's office represents 0.000293% or less than 1/34th of 1% of this total. I have stated on countless occasions that considering the millions of dollars that the government of Ontario spends annually to investigate the citizen, this is a small fraction to set aside to enable the citizen to investigate the agencies of government that

he feels, rightly or wrongly, have been unfair to him. A staff adequate to do the job expected of them is an essential first step to the efficacy of this and any other Ombudsman operation.

At the same time, what must be avoided is the Ombudsman's office becoming as much of a bureaucracy as that which it was set up to survey. What is a bureaucracy? It is layer upon layer of officials each so preoccupied with endeavours to concentrate administrative power in his or her own area that an individual petitioning the organization gets no response from either the whole or its parts. That this could become the case was a fear that was expressed on more than one occasion in the public hearings around the province. The response which was implemented to avoid this situation, consistent with Mr. Renwick's suggestion made in the course of the debate on the Bill, was a decentralization of the office into specialized units which are at the same time small, closely supervised and with clear channels of communication between each other and with the Ombudsman. Thus, specialized units have been created which deal with areas such as corrections, workmen's compensation, native peoples and so on. Not only does this arrangement ensure that a complainant with a specific grievance does not get "lost in the shuffle", but also means that the problem if in one of the more common areas will be dealt with by someone knowledgeable and experienced in that field. It is a structure which we found was successful and one which I advocate.

While on the topic of staffing, some further references to the organization and structure of the office are perhaps in order.

Regardless of the calibre of the personnel attracted to the office, unless it is structured in a workable manner these capabilities will inevitably be wasted. Speaking from my own experience, I found that operating under our initial organizational format which has been described in Chapter III, I was becoming increasingly concerned with matters relating purely to office administration, for example, staff, space, equipment and supplies to the extent that the inroads on my time were affecting my ability to devote myself to the cases brought to the office by complainants. For this reason, and because I wished to be satisfied that the office's personnel and other resources were being utilized in the most efficient manner, I sought and obtained the permission of the Board of Internal Economy to retain a firm of management consultants to review the office's organization. The firm of Hickling - Johnston Limited which was engaged to carry out this study had a thorough working knowledge of government gained through the many prior assignments undertaken by them on behalf of the provincial government. The conclusions contained in its report delivered May 26, 1978 have already been adverted to in Chapter III but for the purposes of this discussion included the creation of the position of Executive Director and a Management Committee. The Executive Director, according to the Report,

"...is seen as directing, administering and coordinating the activities of the Office of the Ombudsman in accordance with the policies, objectives and intent established by the Ombudsman. He assists the Ombudsman in the development of policies and goals that cover operations, personnel and financial performance."

The Executive Director chairs the Management Committee which comprises himself and the six Directors. In short, these managerial innovations were introduced for the purpose of reducing to a great extent the time which must be devoted by the Ombudsman to matters of administration. The success of this reorganization in Ontario must be attributed in large part to the person of Keith Hoilett, a lawyer and former Crown Attorney who had previously served as Special Assistant and Legal Officer and who had distinguished himself by the dignity with which he had presided over the Ombudsman's North Pickering Hearings, who was appointed as Executive Director. But in any event this was a development which I favoured and an improvement which I can highly recommend.

Dealing with staff composition generally, while a lawyer myself I do not hold to the view that the Ombudsman need be a lawyer but I am in firm agreement with those who advocate that the office should have legal advice readily available to it. Also, while it is of inestimable advantage to have among one's personnel a core of former police officers who have a proven investigative ability, at the same time it is in my view a mistake to overload the office with those having a police background. Complaints coming to the office of the Ombudsman span a full range of human problems and as well as having trained investigators it is equally as important to have a diversity of expertise including those with a background in corrections, persons with a background in dealing with those claiming to have been injured in their workplace, psychiatric nurses, social workers, engineers and the like. The actual setting of a

complainant at ease so that the nature of the complaint can be understood is often more difficult than the investigation that may ensue and it may be that the person best suited to this purpose may not have any particular field of professional expertise, may not have an advanced education, but simply have a peculiar facility for communication.

Under this heading some brief mention must be made of staff to deal with chronic complainants. The percentage of the total complainants which may be said to be made up of chronic complainers, most of whom have mental problems, is exceedingly small but their continued reattendance at the office can constitute a significant drain on the staff's time. Soon after the establishment of the office it became obvious that these persons could not be permitted to continue to tie up members of the staff for long periods but at the same time it was unthinkable that they would merely be sent away. Consequently a special desk was established to deal with this group of complainants which it is no exaggeration to say provides one of the most important functions carried out by the entire office. The individual who has been designated to perform this function necessarily requires the utmost tact and infinite patience. The person assigned to this office has held the hands of dozens of such persons over the years and has on occasion assisted certain of them to psychiatric facilities and on one occasion was credited with having prevented a suicide. The news media are all alerted to the existence of this functionary in the office and have all cooperated in maintaining the secrecy of this individual's identity.

Lastly, it is considered of the utmost importance that the staff of the Ombudsman's office be independent of the Civil Service. This is a concept for which support may be found in the resolution adopted by the American Bar Association which provides, in part:

1. That state and local government of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: ...(6)
"freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts;"

(emphasis added)

There are many reasons why this should be so. From the description already given, one may appreciate that the demands made upon the staff of the Ombudsman's office will vary from those which the ordinary civil servant is likely to encounter; the staff will sometimes be expected to absent themselves from their homes for long periods of time in order to go about the province and work long and unusual hours in order to assist in the registering of complaints. More importantly, the staff of the Ombudsman's office are those who will scrutinize the conduct and decisions of civil servants throughout the bureaucracy and it is only right and proper that there be no suggestion of any possible conflict of interest situation arising by virtue of the employee of the Ombudsman's office being similarly a member of the same Civil Service. This principle was considered of sufficient importance that it was

considered at the time of the debate in the Ontario Legislature and carefully guaranteed in the Ombudsman Legislation which provides:

8.(1) Subject to the approval of the Lieutenant Governor in Council, the Ombudsman may employ such officers and other employees as the Ombudsman considers necessary for the efficient operation of his office and may determine their salary and remuneration and terms and conditions of employment.

This clause I consider to be integral to the independence of the Ombudsman's office and any attempt to delete or alter it so as to reverse the situation should be forcefully resisted.

4. Jurisdiction

Experience has shown that a significant proportion of complaints received in the office of the Ombudsman are outside the Ombudsman's jurisdiction. More precisely, the statistics disclose that in the period covered by the Fourth and Fifth Reports, this proportion represented 56% and 55% respectively of the total number of complaints lodged. Importantly, however, these figures disclosed a decrease in the proportion of out-of-jurisdiction complaints experienced in the previous reporting periods, the percentages for the Second and Third Reports being 64% on each occasion. These figures are to some extent misleading in that a considerable number of complaints received are designated as outside jurisdiction simply because they are premature by virtue of the application of the provisions of Section 15(4)(a) of The Ombudsman Act, 1975, and would otherwise fall within the office's jurisdiction if all appeal procedures had been exhausted. Taking the latest reporting period, April 1, 1978 to September 30, 1978, as an example, 23% of the complaints falling outside of the Ombudsman's jurisdiction were those designated premature; if this group were excluded from the out-of-jurisdiction category the percentage of complaints within the jurisdiction of the office would rise from 37% to 43%.

In any event experience has shown that wherever an Ombudsman's office has been established there will always be a proportion of complaints received dealing with matters outside the Ombudsman's ability to investigate. Consistent with the views expressed in the debates in the Ontario Legislature at the time of the creation of the office, persons with complaints falling outside the office's

jurisdiction are never simply turned away but are assisted as much as possible in terms of being advised to whom they may refer their grievance or, for instance, available appeal avenues will be explained to them. To be sure, the amount of staff time and effort devoted to these matters in the aggregate will always be considerable. Indeed, the Select Committee on the Ombudsman has on more than one occasion expressed concern about the amount of time expended on non-jurisdictional matters. Notwithstanding this concern the office's practice has remained unchanged, reflecting the principle that the Ombudsman's office is established to serve all of the citizens of the province, specifically with regard to matters falling within the competence of the Ombudsman, but also with respect to any difficulties they might experience with appointed officialdom. The public, after all, is paying for the office, and they are entitled to whatever benefits it can offer them. Also, it should be borne in mind that the proportion of non-jurisdictional complaints received in the office is declining and this trend may be expected to continue as the office becomes even better known and understood. Considering this factor in conjunction with the anticipated efficiencies which will result from the implementation of the Hickling - Johnston Report and the benefit which will flow from the creation of a federal Ombudsman, the time devoted to non-jurisdictional matters can be expected to continue to decrease.

Concern for the extra-jurisdictional complainant is thus a hallmark of the Ombudsman's office in Ontario and in my view should always continue to be so. Indeed, the principle adopted in Nova Scotia of not only referring out-of-jurisdiction complainants to

those who might provide an appropriate remedy but also following-up on those referrals to ascertain if there has been a satisfactory resolution of the grievance is a commendable ideal for which the office might strive. On the other hand, as I have stated on numerous prior occasions, it is a matter of deep concern that some particular categories of complaints can only be referred and may not be actually investigated and made the matter of a recommendation in the event the Ombudsman is of a contrary conclusion to that of the public servant.

One category of complaints to which the above observation applies involves complaints concerning actions or omissions in the course of the administration of municipal governmental organizations. Statistics compiled in respect of the office's most recent two reporting periods disclose that approximately 10% to 12% of the non-jurisdictional complaints received in the office of the Ombudsman concerned the actions of municipal agencies and officials, or in the neighbourhood of 400 to 500 complaints per annum. Interestingly enough, this is approximately the exact same number of complaints received concerning federal departments or agencies of government in respect of which it has been decided that an Ombudsman's office should be created. And these figures are even more impressive when one considers the extent of the publicity given the office which often goes to great pains to explain that such matters are not within the Ombudsman's jurisdiction.

If one accepts the proposition that an Ombudsman can be of assistance to members of the public in terms of ensuring that administrative justice is available to all insofar as the adminis-

tration of federal and provincial governments are concerned, is the argument any less valid insofar as the administration of municipal governmental agencies is concerned? The question of the extension of the ambit of the Ombudsman's competence to include jurisdiction in respect of municipal government was a concept advocated by a number of members who spoke on the Bill at the time of the debate in the Ontario Legislature. It was similarly a matter of concern to those who chose to make representations on the occasion of the hearings around the province. It is a concept much favoured in the literature concerning the Ombudsman and one regarding which the Honourable J.C. McRuer made a specific recommendation in his Report upon the Royal Commission Inquiry into Civil Rights. Concerning the subject of a municipal Ombudsman, he had this to say at page 1387 of Volume 4 of his Report:

We think the case for an Ombudsman as a safeguard to the rights of the individual in the municipal field of government is much stronger than in the provincial field.

In the municipal field the same searchlight of public scrutiny does not exist as in the provincial field of government. There is no organized opposition to the government, seeking to expose maladministration, and the theory of ministerial responsibility does not exist. We are convinced that when the procedural safeguards which we have recommended in Report Number I are made to apply to the decision-making process in the municipal field, the need for an Ombudsman in municipal affairs will be reduced considerably. Nevertheless, in the light of the wide areas of power exercised by local government authorities and the diverse character of the bodies exercising administrative power it would appear that an Ombudsman exercising the functions similar in nature to those exercised by the Parliamentary Commissioner in New Zealand would perform a useful service in the process of municipal government.

This is additionally a field which has been included within the Ombudsman's sphere of competence in a great many other jurisdictions, including New Zealand, all of the Australian States, Sweden, Denmark, Norway, Finland and Guyana. Some countries, such as England, Wales and Scotland, have established a separate office of Local Commissioner to investigate matters of complaint made by or on behalf of members of the public claiming to have sustained injustice in consequence of maladministration in connection with any action taken on behalf of a local authority. A number of municipalities, including Berkeley, California, Jackson County, Missouri, Seattle and King County, Washington, and the cities of Jerusalem and Haifa in Israel have established their own Ombudsman plans. In Canada, where local governments constitutionally derive their authority from the provincial government, the Ombudsmen of Nova Scotia and New Brunswick have been given the authority to investigate administrative actions taken by officials of local government.

From the outset I have taken the position that the jurisdiction of the Ombudsman in Ontario should be extended to include complaints dealing with local administrative bodies. The Select Committee on the Ombudsman in its Fourth Report supported the concept of an Ombudsman for local government in Ontario but recommended that the function should not be performed by an Ombudsman who has jurisdiction over provincial or central governmental organizations. In arriving at this recommendation the Committee made reference to its conclusion to the effect that a different standard of performance is to be applied to local municipalities

than to provincial authorities, and went on to state:

"The process of government is different, the circumstances giving rise to actions are different and the consequences of those actions are different. All of these factors cause the Committee to conclude that the Ombudsman should be different - different from the Provincial Ombudsman."

Dealing with the conclusion that a different standard of performance supposedly applies in the case of municipal governments, I would respectfully disagree with the Committee. In the administration of municipal organizations, as in the administration of provincial or federal organizations, the standard to be sought is identical - namely, a level of administration of which it can be said that no citizen is treated illegally, arbitrarily, unfairly or unjustly. As for the alleged differences in the process of government, even if it could be argued that this is so to some minimal degree, in my view this is beside the point; the only relevant consideration is in terms of consequences to members of the public, and in this regard an injustice arising from maladministration on the part of a municipal governmental organization is no different in character than injustice arising from maladministration on the part of a provincial governmental organization.

I am firmly convinced that there is a constant effort being made by local bodies to improve the standard of their administration and the assistance of the office of the Ombudsman in this effort would be a development that would be welcomed by the local authorities themselves. The main advantage of conferring this jurisdiction upon the provincial Ombudsman would be the avoidance of inconvenience

and confusion on the part of the public that can be achieved if the total Ombudsman function is brought under the one central direction. In addition there is the saving of the additional cost of this separate office or offices that would be incurred in financing the operation contemplated by the Select Committee, a cost that could easily run into hundreds of thousands of dollars. A further obvious advantage is that with the office already established even the expected initial deluge of such complaints could very probably be accommodated by the existing office without significant modifications.

Also along the lines of ensuring that the services of the Ombudsman's office are available to those in need of it, but closer to the office's present jurisdiction as regards the provincial government, it is my considered view that the Ombudsman's jurisdiction should similarly be extended to include such organizations as hospitals, universities, boards of education, nursing homes and other such bodies financed in whole or in substantial part with public funds. Apart from the question of funding, in my view the test should be "is the body established by statute and carrying out its functions pursuant to a statute?" It would be impossible to arrive at a definition which would exactly cover each and every situation and it is suggested that these additions to the Ombudsman's jurisdiction might best be brought within the statute by way of a Schedule to the Act that specifies exactly what is within the Ombudsman's jurisdiction. This Schedule would also spell out those agencies of government presently within the Ombudsman's jurisdiction so that recurring problems with the definition of a "governmental

organization" may be avoided in the future and hopefully both the agencies concerned and the Ombudsman's office can benefit from the resulting greater specificity. In addition to these advantages of exactitude such a Schedule would also allow for convenience in that the legislation could provide that the Schedule could be amended by Order-in-Council to allow for additions without complication.

5. Reception of Complaints

Since its inception the position adopted by the office has been to stress flexibility in terms of the reception of complaints. The guiding principle has always been to place as few obstacles as humanly possible in the path of a potential complainant. For example, Section 17(1) of The Ombudsman Act, 1975 provides that:

"Every complaint to the Ombudsman shall be made in writing."

The debates in the Ontario Legislature were very specific on the topic that the Ombudsman should interpret this requirement that complaints shall be made in writing broadly. Accordingly, it was determined that there could be said to be compliance with the wording of this section notwithstanding that the writing was at the instance of the Ombudsman's staff. It might be added that this practice was endorsed by the Select Committee on Guidelines for the Ombudsman under the chairmanship of Mr. Vernon Singer which in its report dated December 11, 1975 recommended:

"That there be available in the Ombudsman's office such facilities as are necessary to enable those persons who wish to make complaints and who are unable to express adequately themselves in writing to have their views committed in writing by someone on the Ombudsman's staff."

To this date I remain of the view that this flexible attitude is the right approach to receiving complaints.

Along these same lines, it has already been noted that members of the public are welcome in the office which for their convenience remains open every weekday until 10:00 p.m. Complainants

who prefer to meet with a member of the office's staff and outline the nature of their complaints verbally have always been able and encouraged to do so. No objection is raised to the reception of complaints over the telephone. Correspondence and communication with the office in the language of one's choice is facilitated to the extent of eighteen of the other languages most commonly encountered in the province. Unlike a number of other jurisdictions there is no requirement of a signature on a complaint before it will be accepted.

It is probably in no small measure on account of these efforts to accommodate the complainant that in the year ending September 30, 1978, 23% of the complaints received were as a result of a personal attendance at the office in Toronto. Then again the programme of private hearings, which in the same period accounted for another 21% of the complaints received, was initially conceived with the idea in mind that in order to minimize the inconvenience to the public and thereby facilitate the reception of complaints, the office should go to the locale of the complainants rather than wait for the complainants to come to the office. Considered together these two avenues of complaint meant a total of 3,050 complaints were received in the office in the 12 months ending September 30, 1978 other than by way of correspondence. This figure is of particular significance when one reflects upon the fact that if the office were to insist upon complaints being by way of correspondence, as some offices do, a proportion of these grievances might never have come to the attention of the Ombudsman.

6. Investigation of Complaints

In any newly-created Ombudsman's office it fast becomes obvious that it is of the utmost importance to reduce to a minimum any time spent unnecessarily in the investigation of complaints. This is simply because of the tremendous volume of complaints requiring investigation and the man hours required for an exhaustive, complete investigation of any file. Accordingly, as already detailed in Chapter III, in circumstances where an investigation was considered appropriate it was decided at an early stage to include in the original letter sent to the ministry or agency concerned pursuant to Section 19(1) of The Ombudsman Act, 1975 a paragraph to the following effect:

"The purpose of this letter is to inform you, pursuant to Section 19(1) of The Ombudsman Act, 1975, of the Ombudsman's intention to investigate this complaint. It is quite possible that it would expedite the resolution of this matter if your [governmental organization] were prepared at this time to indicate its view of this complaint. Accordingly, to enable you to do so, we shall delay our investigation for a period of three weeks from the date of your receipt of this letter."

In this way the Ombudsman's office may be apprised at the outset if the ministry or agency involved is of the view that a reconsideration and/or an alteration of their earlier decision will be forthcoming. In many instances, this procedure has saved the Ombudsman's office the inconvenience of a lengthy investigation to document its case in circumstances where the administration moved to correct a situation as soon as it was advised. Such a procedure is in no way inconsistent with what must remain one of the essentials of the Ombudsman's office, namely, that investigations are at

all times thorough, competent and impartial, but simply allows for the assignment of investigators to those matters most urgently confirmed to be in need of investigation.

Dealing with the manner of investigation, the most important principle that must underlie all enquiries is the obligation on the part of the Ombudsman's staff to keep an open mind until the investigation is concluded. Correspondingly important is the duty incumbent upon all staff, but particularly the investigative personnel, to ensure that everyone with whom they come in contact is treated with utmost courtesy and understanding. The members of the investigative staff of the Ombudsman's office are in a very real sense the ambassadors of the office and their conduct will be viewed as indicative of the attitude of the entire office. It is well-known that the smallness of human beings can surface upon the placement of individuals in a position of authority. An eye to this propensity must be borne in mind in the selection of investigative personnel; equally, it should be made patently clear that any impropriety in terms of aggressiveness or bad manners will be viewed as misconduct which cannot be tolerated in an individual assigned to investigations.

The benefits of investigators being assigned to designated areas of specialty have been discussed previously. While it probably does not need repeating it was decided that the efficiency of the office and the convenience of complainants would both be assisted by the organization of the office into units with responsibility for particular areas of complaint;

also within the General Investigations Directorate the individual investigators have primary responsibility for one or more policy fields, each dealing exclusively with all complaints against these assigned policy fields. This is a system which in my view works well and which accomplishes its intended objectives.

While on the topic of the investigation of complaints, a word is appropriate concerning the question of keeping complainants apprised of the progress of investigations. A survey conducted by the American Bar Association disclosed that the single greatest complaint that the general public had against lawyers was not that they were not performing competently but that they failed to keep their clients advised as to how matters were proceeding. Significantly, this is similarly a common complaint against the bureaucracy. To avoid criticism of the Ombudsman along these lines a system was implemented whereby the office endeavoured to advise complainants regularly regarding the progress of the investigations. Experience has shown that this procedure not only ensures that complaints are kept up-to-date on investigations but also considerably reduces the amount of time that the Ombudsman's staff is required to spend on the telephone in response to calls from complainants seeking to know the status of their complaints.

7. Disposition of Complaints

The Ontario Ombudsman's principal duty is "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity" and, where he deems it appropriate, to recommend corrective measures be taken in respect of those matters investigated by him. In order that the Legislature, in relation to which the Ombudsman is the agent, be kept informed of his activities there is the obligation spelled out in Section 12 of The Ombudsman Act, 1975 to the effect that:

"The Ombudsman shall report annually upon the affairs of his office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session."

In addition, where the Ombudsman has made recommendations concerning action he considers warranted and there has been no response on the part of the governmental organization which is in his view adequate and appropriate, Section 22(4) of the Act provides that he may thereupon report the matter to the Premier and thereafter to the Assembly. These provisions, in theory, allow for a procedure to follow up on the Ombudsman's investigations, particularly in those instances where his recommendations have been resisted.

The extent to which these procedures, without more, will generate any meaningful response by reason of a reaction on the part of the Legislature is doubtful. One obvious failing, which did not escape the attention of those who participated in the

debate on the Bill, is that reporting on the activities of the office on an annual basis simply does not allow for any nexus to grow up between the Ombudsman's office and the Legislature. Members such as Mr. Patrick Reid, Mr. Vernon Singer and Mr. James Renwick all emphasized the need for the Assembly to receive "regular" reports from the Ombudsman, so as to be kept abreast of his activities. So also in the literature one finds writers such as Michael Hidén advocating frequent reports by the Ombudsman in order to enhance the legislative impact of the office. I found that in a number of other jurisdictions, Victoria, Australia being but one example, reporting more frequently than annually had been implemented in order to reinforce this link with Legislature.

Because I found myself in substantial sympathy with these concerns, and also because of the very volume of complaints dealt with by the Ombudsman in Ontario annually, I determined that the provisions of Section 12 should be regarded as a minimum requirement, and both the members of the public and the Legislature would be better served if reports were issued on a semi-annual basis. This practice was instituted as of April 1, 1977 and thereafter reports were issued having cut-off dates of March 31 and September 30 respectively. The Select Committee on the Ombudsman indicated in its Fifth Report that they concurred with this approach and found this practice a "workable, convenient and efficient process".

However, frequency of reporting of the office's activities hardly serves to solve all of the problems surrounding inadequate

legislative follow-up on the Ombudsman's investigations. While it may serve to ensure that the Ombudsman's concerns are at least contemporary when they reach the floor of the Legislative Assembly a basic problem remains; that is, there is nothing to require that a report tabled by the Ombudsman, be it a semi-annual or a special report, be debated by the Assembly. The Speaker must cause the report to be laid before the Assembly, but there is no requirement for debate and this is particularly the case with respect to special reports. There have been occasions in other jurisdictions where special reports of Ombudsmen have died on the order paper without any debate having taken place whatsoever.

This defect in the legislation has always been a matter of concern to me and was similarly a matter of concern to a number of those who participated in the debate in the Legislature at the time the Bill was introduced. Mr. Reid, for instance, indicated that he felt there should be "a mechanism so that we can debate the report of the Ombudsman, because in the final analysis it is going to be public opinion and the glare of publicity that may effect some change". Mr. Renwick was more specific - he proposed that the Ombudsman report to a select committee of the Assembly "and the select committee pick up where [he] leaves off". This committee could, "in consultation with the Ombudsman", carry through "on the criticism of whatever departments of government... deserve criticism for maladministration".

Over a period of time I came to share the views of Mr. Renwick, that the Ombudsman function could be augmented by the appointment of a select committee which would receive and consider the Ombudsman's reports and thereafter itself report to the Assembly. It seemed to me that this vehicle could provide a remedy for the failing to which Mr. Reid made reference - that a mechanism for debating the Ombudsman's conclusions was absent from the legislation. In short, I was persuaded that a select committee could provide the Ombudsman with a forum and a corridor of access to the Legislature having far greater scope and potential than the simple tabling of a report. I say this because in a select committee's consideration of the Ombudsman's reports there will inevitably occur debate concerning both the Ombudsman's and the committee's recommendations. Such a committee has the power to call before it members of the Government and the administration to explain positions taken in respect of investigations undertaken and conclusions reported upon by the Ombudsman. Later, at such time as the committee's own report is moved for adoption, it follows that there is a significantly higher probability of debate on matters of importance which will have attracted comment in the committee's hearings and upon which members of the Assembly not appointed to the committee may have some additional comments.

It may also be expressed this way; except in certain specific cases, before there can be debate, there must be a Question proposed to the House from the Chair. The Question proposed from

the Chair for debate is - "Shall the report [of the Select Committee] be received and adopted?" It is this Question which is debated in the case of a committee report the adoption of which has been moved. The additional exposure flowing from the Committee's hearings enhances the likelihood of debate on this Question.

At one juncture I gave some consideration to a possible recommendation that any vote which took place in the Legislature on a report of the Ombudsman be a free vote. Such a vote is usually reserved for matters of conscience such as a vote on the issue of the abolition of capital punishment, and simply means that the party whips are called off and each member is free to vote according to his or her conscience and without reference to a declared party position. Defeat of a position advocated by the Government in such a vote is not interpreted as a defeat indicating a loss of confidence in the Government in consequence of which the Government should feel it must resign. One of the attractive features of a free vote would be that it would underline the fact that the Ombudsman is the agent of the Legislature as a whole and not of any particular party. Furthermore, such a vote would on its face imply a truly independent and non-partisan consideration of the question giving rise to the issue before the Assembly. On the other hand, in our investigations the opinion was expressed by those whose views are entitled to respect that the free vote concept is simply unworkable. That is, if the issue happened to be one regarding

which the Government felt strongly, party solidarity would be enforced; if solidarity were not enforced, and the Government were defeated, the Government would still be inclined towards resignation. What we would have is a free vote in theory but not in practice all of which would do a disservice to the office of the Ombudsman whose recommendation insofar as the public is concerned would be seen to have been rejected on a "free" vote and its image and prestige damaged accordingly. This point was forcefully made in a very enlightening meeting we had with a leading Member of the Legislative Assembly in Queensland, Australia.

I concluded that the appointment of a select committee would be a more workable alternative than the free vote concept. Because of the nature of party politics the inevitable debate upon issues before the committee would, notwithstanding the members' partiality, serve to draw attention to those issues meriting consideration after the Ombudsman had completed whatever scrutiny he might have employed. A possibility that entered my mind at that time and which might still merit consideration to render the deliberations of the select committee as apolitical as possible would be to appoint to that committee, contrary to tradition, equal members of each party represented in the Assembly where this is possible.

In coming to favour the concept of a select committee I was particularly swayed by the experience and effectiveness of the Ombudsman Committees I had observed in operation in Great Britain and Israel. Briefly, those Committees function so as to complement the efforts of the Ombudsman's office in those jurisdictions in the sense that the Ombudsman's findings, recommendations and conclusions are analyzed and the administration's reaction examined so that any intransigence on the Government's side can be highlighted. Valuable research and constructive suggestions are therefore not allowed to be forgotten or ignored. These Committees occupy themselves very much with the implementation of the Ombudsman's recommendations - taking up where the Ombudsman leaves off - rather than reinvestigating cases or reconsidering decisions. These systems draw their strength from the fact that each body respects the sphere of operation of the other; the Ombudsman's office investigates and makes recommendations, the Ombudsman Committee inquires into the extent to which these recommendations have been implemented. Specifically, the Committees in Great Britain and Israel do not conceive their function as supervisory of the Ombudsman; they take their direction from the Ombudsman rather than attempting to direct his efforts.

The danger to be avoided in this structuring of the Ombudsman's operation is any suggestion of intrusion by the political arm of the Legislature into the Ombudsman function. Throughout it has been emphasized that it is the independence of the office, from the executive, from the administration, with only general accountability to the Legislature, that is the cornerstone of the Ombudsman concept. As stated by Professor Donald Rowat, the first and most critical characteristic of an Ombudsman is that he is an "independent, non partisan, officer of the Assembly". The office must remain as free of political supervision as the office of the Provincial Auditor or the Chairman of the Public Service Commission. All of which is not to say that the Ombudsman should not be answerable to the Legislature, but the latter, with its power to dismiss the Ombudsman for cause and to determine his budget has all the control over the office necessary.

It is sometimes forgotten that the independence of the Ombudsman's office is of more than symbolic significance. There are other, alternative, complaint resolution mechanisms, some of which do not involve this independence of the political arm. One obvious example is the Petitions Committee of the Bundestag in the Federal Republic of West Germany where all complaints are investigated under the aegis of a permanent committee comprised of sitting members of the German Parliament. A similar committee carries on a complaint investigation operation in Tasmania. It must be assumed that alternatives such as these committees were considered at the time a plan was proposed for Ontario, and it is no accident that

it was a legislative style Ombudsman system with its attendant characteristics that was introduced in this province. The objection to an scheme involving partisan politicians is that such persons are politicians first, and while this manner of thinking may be appropriate to the Legislature it is not suitable for dealing with the complaints of individuals. Where injustice to the individual is concerned politics should play no part. The independence of the Ombudsman's office is therefore of the utmost importance.

Section 16(1) The Ombudsman Act, 1975 provides that:

"The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act."

On October 29, 1975 a Select Committee on Guidelines for the Ombudsman was established under the chairmanship of Mr. Vernon Singer. Its terms of reference were "to consider and set out general rules and guidelines for the guidance of the Ombudsman". That Committee reported on December 11, 1975 recommending certain minor rules be adopted but deferred any delineation of general rules for the consideration of a permanent Committee of the Legislature which they recommended be immediately established which would review:

- (a) The Ombudsman's Reports;
- (b) The Ombudsman's Estimates; and,
- (c) The actions, or the lack of action, taken by those persons referred to in the Ombudsman's Reports.

The recommendation contained in the report of the Select Committee on Guidelines for the Ombudsman to the effect that a permanent Committee of the Legislature should be established was one which I viewed with favour. As indicated in the preceding paragraphs I felt that such a committee could provide an added measure of strength to the Ombudsman concept. This view, of course, was predicated on the assumption that this committee would operate in a manner analogous to those committees I had studied in Great Britain and Israel.

The present Select Committee on the Ombudsman came into being in July, 1976. It came about as a result of the report of the Ombudsman concerning the North Pickering Project delivered to the Minister of Housing in June, 1976. When the report was rejected a series of meetings took place between myself and the Premier pursuant to Section 22(4) of The Ombudsman Act, 1975. During these discussions it was agreed between the Premier and myself that a Select Committee of the Legislature representing all of the political parties in the same proportions as they are represented in the House should be appointed to consider the report and recommendations regarding the North Pickering matter.

On a motion of the Premier seconded by the Leader of the Opposition, a Select Committee was appointed on July 15, 1976 to consider the reports of the Ombudsman and to report thereafter to the Legislature such recommendations as the Committee deemed appropriate. On July 12, 1977 the Committee's Order of Reference was extended to permit it as it deemed necessary to formulate

general rules for the guidance of the Ombudsman in the exercise of his function under The Ombudsman Act, 1975; in essence, the mandate of the previous Select Committee on Guidelines for the Ombudsman was transferred to the Select Committee on the Ombudsman. On January 19, 1978 the final expansion of the present Select Committee's terms of reference came about on which date it was agreed that in the future the Chairman of the Select Committee would attend the meetings of the Board of Internal Economy to observe the preliminary examination by that Board of the Ombudsman's estimates.

The foregoing summary sets forth the terms of reference of the Select Committee as it exists today. The Committee's mandate is clear and unambiguous. I reiterate that operating within that mandate and in close cooperation with the Ombudsman the Committee could have augmented inestimably the effectiveness of the Ombudsman's office. There is the potential in this structure for a partnership between the Ombudsman and the Select Committee combining a capacity to investigate and point up injustice to the individual with an ability to carry forward recommendations to rectify these injustices to the very floor of the Legislature.

Unfortunately, such a partnership has never developed. Instead, an arm's length adversarial relationship grew up between the Committee and the Ombudsman's office. The Ombudsman's direction regarding those areas in which the Committee could be of real assistance was never sought. An atmosphere of hostility pervaded

the Committee's meetings with members of the Ombudsman's staff. A stringent, legalistic interpretation of the legislation was urged upon the Ombudsman by the Committee which interpretation, if followed, would render the Ombudsman's job virtually impossible. Most seriously, however, the Committee chose to ignore the limitations of its mandate and attempted to exercise control over the administration of the Ombudsman's office itself.

An illustration of this latter type of conduct was manifested in the position adopted by the Select Committee in response to a complaint against the Ombudsman's office by Mr. Patrick Reid, a Member of the Legislative Assembly. Mr. Reid's complaint was based on the fact that a member of the Ombudsman's staff had appeared on television with an individual who had been nominated as an opposition candidate in Mr. Reid's constituency for the next provincial election. Upon his complaint to me I indicated to Mr. Reid that an internal investigation had been commenced by myself and advised him of the result of this investigation. I upheld Mr. Reid's complaint, and the two staff members responsible apologized to him. I refused, however, to dismiss them as Mr. Reid recommended. Notwithstanding this, the Select Committee elected to inquire into this affair at its hearing on March 22, 1977.

I took the position at that time, as I restate the position now, that the Select Committee on the Ombudsman under its present terms of reference has no jurisdiction to inquire into or dictate to the office of the Ombudsman in relation to any matter not pertaining to the carrying out of the Ombudsman's function of investigating and reporting - certainly not in relation to the

employment and supervision of the staff in the Ombudsman's office, the more so when the activity in question is unrelated to the performance of the Ombudsman's function. I indicated it to be my perception that if the Select Committee were to involve itself in considerations of this nature the concept and practice of the Ombudsman's function in Ontario would be radically altered. Indeed, the whole principle of impartiality and non-partisanship in the future operation of the Ombudsman's office would be in jeopardy if the Ombudsman were to accede to such an extension of the Committee's jurisdiction. Simply stated, interference by the Select Committee in relation to the discipline of the Ombudsman's staff is incompatible with the independence of the office. Until the Legislature rules to the contrary the day-to-day operation of the Ombudsman's office must remain divorced from the political arm of the Legislature or else the concept of the Ombudsman as introduced in Ontario will cease to exist. My letter of March 18, 1977 to Mr. Renwick, then Committee Chairman, states my position clearly. The point is important and the letter is reproduced in extenso as Appendix D.

In its Fifth report the Committee states that its function is as follows:

"The Committee has consistently held the view that it could not fulfill its responsibility to the Legislature if, when considering reports of the Ombudsman, it did not review in detail the organization and operation of the Ombudsman's office."

Accordingly, the Committee went on to indicate that it was its intention "to review with the office of the Ombudsman all phases

of the Ombudsman's functions which were exercised" in relation to particular complaints and:

"[w]hen it appears to the Committee that the Ombudsman has complied with the provisions of the legislation where the governmental organization's response is not adequate, appropriate or reasonable to the Committee, it will prima facie support the Ombudsman's recommendation."

In these passages quoted, the Committee is in effect saying two things:

1. That it perceives among its functions to serve as an agency to supervise the Ombudsman's office to determine whether procedures followed in relation to particular complaints have been in strict accordance with the provisions of The Ombudsman Act, 1975; and,
2. That an additional function it serves is as an agency to investigate into the decisions reached by the Ombudsman's office in relation to particular complaints.

The questions which I raise in the context of these passages are self-evident. First, in relation to the Committee's perceived duty to reinvestigate decisions of the Ombudsman, one might query whether this was not precisely the function assigned to the Ombudsman, and again, if the Legislature had such a procedure in mind might it not have established an Ombudsman Committee along the lines of the Petitions Committee of the Bundestag in the Federal Republic of West Germany rather than create an Ombudsman. In effect, is the Select Committee not appropriating to itself a function properly only the business of the Ombudsman? Is the public not being asked to pay twice for what it legitimately should only have to pay once? This professed duty on the part of the Select Committee in my view amounts to nothing more than second-guessing

the conclusions of the Ombudsman, a practice that from the standpoint of the independence of the Ombudsman is intolerable.

Secondly, regarding the obligation assumed by the Committee to supervise the Ombudsman's compliance with the provisions of the statute, the question that arises again is who is responsible for the office's procedures - the Ombudsman or the Select Committee? The same observations concerning the duplication of efforts are applicable in this context. The concomitant difficulty that presents itself is "according to whose interpretation of the Act, the Committee's or the Ombudsman's?" What has really happened is that the Committee has assumed a sort of appellate jurisdiction over the office of the Ombudsman. That, in short, is not the way the Ombudsman concept was designed to function.

A final illustration of the type of absurd situation to which this supervisory stance can lead is the Committee's recommendation contained in its Fifth Report to the effect that:

"A general rule be formulated to provide that whenever there may be sufficient grounds for the Ombudsman to make a report or recommendation under Section 22(3) of The Ombudsman Act, which has the effect of altering, opposing or causing the original decision, recommendation, act or omission to be changed in any way, the Ombudsman has an obligation to give the governmental organization and any person who is identified or is capable of being identified and who may have made or contributed to the decision, recommendation, act or omission, an opportunity to make representations."

The practical effect of implementing a general rule of this order would render the Ombudsman's function so unworkable that it is astounding that such a "rule" should even be suggested. Compliance with this wording in the strictest sense would require significant additions to the present complement of staff and the completion of investigations would take a great deal longer, both adding greatly to the overall expense of the Ombudsman's office. Such a recommendation points up and highlights the total inability of those who must concern themselves first and foremost with their duties as members of the Legislature and who themselves lack any experience in the workings of an Ombudsman's office to assist the latter in the day-to-day administration of that office.

I think it important to point out at this juncture that while references have been made to the committees which receive and consider the Ombudsman's reports in Great Britain and Israel, these are not the only such committees in existence. Other examples with which I am familiar and which have been studied first-hand by the Select Committee exist in Denmark and Sweden. But I think it fair to say that there is no other committee in the world carrying on these functions which has sought to exercise the control over the Ombudsman's office which has been attempted by the Select Committee on the Ombudsman in Ontario. And again, it is no accident that one finds this policy of non-interference practiced elsewhere. The rationale underlying the philosophy of these other committees may be found, ironically enough, reproduced in the Fourth Report of the Select Committee on the Ombudsman in its description of the Justice Committee of the Danish Parliament as follows:

"There is very little if any direct relationship between the Ombudsman and the Committee. On average, every two years the Committee will have a general discussion with the Ombudsman respecting general matters, such as the adequacy of his office and staff. The Committee has been reluctant to become involved in more detail with the Ombudsman for fear it would be taken as interference with him in the performance of his office. The independence of the office is something which the Committee guards quite carefully. One principal reason for this is that the Committee and Parliament have confidence in the Ombudsman and his ability to carry out his functions as they expect they should be carried out."

All of these previous comments notwithstanding, I remain of the view that a Select Committee can be a valuable adjunct to the Ombudsman's office, provided, of course, each works closely with the other at the same time respecting their distinct spheres of responsibility. Otherwise, as was the case in Ontario up to and at the time of my leaving the office of Ombudsman, the situation is an unhealthy one and tends to inhibit rather than enhance the Ombudsman function. I am hopeful for the sake of the citizens of Ontario that in the months and years to come the relationship between the Ombudsman and the Select Committee will improve and flourish. The comments contained in the preceding pages, while perhaps appearing overly critical, are intended only to assist in bringing about this result.

8. The Ombudsman's Relationship with the Member of the Legislative Assembly

The institution of the Ombudsman is not a traditional office of the Westminster form of Parliamentary government which in the past has relied upon the concepts of Ministerial responsibility and Question period in the House to guard against and to remedy those abuses which might fall within an Ombudsman's jurisdiction. Based in large part upon this tradition many of those opposed to the creation of an Ombudsman's office argued that such an office would at worst be in competition with the ordinary Member of the Legislature in the area of constituents' grievances, and at best was unnecessary and redundant. As to whether the Ombudsman poses a threat to the provincial Member or is in some way in competition with him, this was never my philosophy of the office's function nor has it in my view been the case in practice. On the question of the Ombudsman being unnecessary or redundant, the words of Dr. I.E. Nebenzahl, Israel's Commissioner for Complaints from the Public, delivered on the occasion of the First International Ombudsman Conference in 1976 are perhaps appropriate:

"The affairs of human society are hardly anywhere in such good shape that the potential of a blessing can be permitted to be redundant".

At the heart of the philosophy pursuant to which the Ontario Ombudsman's office was organized is that the office is an adjunct to the role and function of the elected Member of the Legislature, that they are "fellow Ombudsmen" as it were. The Ombudsman was granted powers in excess of those possessed by the ordinary elected member - to inspect documents, to initiate inspections, to subpoena witnesses, to hold hearings and the like - because to

grant such powers to each and every elected member would have been to invite chaos. Instead, they were granted to a single official, the Ombudsman, who in a sense acts as the trustee of those powers for the elected members and for the people. Their roles are complementary; in no way should the Ombudsman and the M.P.P. be at cross-purposes with one another.

It is sometimes forgotten that the great majority of the sitting Members of the Legislative Assembly are elected by a minority of the voters in their respective constituencies. Common sense would indicate, and my experience confirms, that there is a large body of persons in every riding who are disinclined, often embarrassed, to take their problems to their M.P.P. for whom they did not vote and whose politics they may not favour. The creation of the Ombudsman's office allows for an alternative avenue of complaint for this group, free of any political trappings, and in a very real sense better enables the M.P.P.s to know that the concerns of all of their constituents have been properly attended to. At the same time, the M.P.P. is relieved of these obligations and is thereby correspondingly free to devote more time to his or her legislative duties.

The Ombudsman's office has always endeavoured to make individual Members of the Legislative Assembly feel welcome to bring either their own or their constituents' complaints to the Ombudsman or to call upon the Ombudsman's office for advice in the handling of complaints on their own. To further this relationship, every complainant who attends any of the private hearings throughout the Province is asked if he or she has any objection

to the complainant's M.P.P. being informed of the progress made in the investigation of that complaint, and certainly if the complaint is brought to the office by the M.P.P. he or she will be kept apprised of the investigation and disposition of that complaint.. It has been noted previously that when the private hearings are scheduled in centres around the province the local Member is always invited to attend and participate as is the case if a member of the staff is invited to address service clubs or similar organizations. Whether the Member attends or not a statistical summary of the complaints received on a hearing will be provided to the appropriate Member. In order to further underline and facilitate this relationship with the M.P.P.s the Ombudsman asked for and was granted an office facility in the Legislative Building to which M.P.P.s might refer complainants and, as already mentioned, both the operation of the Select Committee on the Ombudsman and semi-annual reporting on the Ombudsman's part should assist to reinforce this nexus with the public's elected representatives.

In rereading what I have written concerning the Ombudsman's relationship with the M.P.P. I am concerned that what I have said might sound overly critical. During my tenure I was the target of some strong criticism that came from a very small minority of vocal M.P.P.s. However, when I resigned the office of the Ombudsman I took away with me the impression that the great majority of the Members are hard-working and dedicated to the office they hold and to the people of the province that they serve. There was just as vocal a

minority which was gracious in its support of me and of what I was trying to accomplish. I felt I had the basic good will of the large silent majority of the Legislature and I am confident that as the office of the Ombudsman evolves and their relationship with it continues the Members will become increasingly aware of how valuable the office is to them in their efforts to serve the people.

9. The Ombudsman's Relationship with the Civil Service

By way of background to any discussion of the relationship between the Ombudsman and the Civil Service it is important to bear in mind at all times the rationale behind the creation of an Ombudsman's office; namely, an Ombudsman's office is created as a result of the recognition on the part of the Government that in carrying out the day-to-day business of Government, because of the size of the administration and because that administration is comprised of humans, mistakes and misjudgments must necessarily occur. Given that these mistakes do occur the question of the relationship between the Ombudsman and the Civil Service resolves itself largely into a question of the delineation of an atmosphere most conducive to achieving a resolution of those matters made the subject of a complaint to the Ombudsman, some of which will involve errors and omissions on the part of the administration, as smoothly and as expeditiously as possible. In this regard, I do not mean to talk about the feelings of suspicion or distrust on the part of the Civil Service which may have initially accompanied the introduction of an Ombudsman plan in Ontario, but which I suggest have largely dissipated now that it is clear that the Ombudsman's office is not functioning in any sense as a prosecutor of the Civil Service. Dealing with this latter aspect, I was heartened by the comments made by Mr. Arthur J. Herridge, Assistant Deputy Minister of the Ontario Ministry of Natural Resources (now Deputy Minister of Northern Affairs), on the occasion of the Canadian Conference of Legislative Ombudsmen on September 15, 1977 where he stated, in part:

"I don't mind telling you that in the Ministry of Natural Resources many of us initially had certain qualms and apprehensions about the prospect of many of our often difficult administrative decisions being closely scrutinized by persons who were not necessarily conversant with the particular problems and perspectives of our fields of operation. However, after some two full years of experience with the Ombudsman's staff, we have found that virtually all our initial qualms and apprehensions have turned out to be groundless."

Dealing with the relationship between the Ombudsman and the Civil Service, to my mind this has two distinct but interdependent aspects:

- (1) Conceptually how should the Ombudsman and the Civil Service regard one another; and,
- (2) Practically, how should the Ombudsman and the Civil Service go about resolving complaints?

Dealing with the conceptual aspect to begin with, and looking first as to how the Ombudsman's office should regard the Civil Service, it is my conviction that we are better served by our provincial governmental administration than most Ontarians are prepared to admit or at least do admit. I have indicated previously that I was not long in the position of Ombudsman before I learned to appreciate the combination of talent, knowledge and expertise that is concentrated in this distinguished group of public servants who execute their heavy responsibilities with a degree of integrity and skill which should give great confidence

to the people of Ontario. I indicated in my First Annual Report that I was not only impressed by the high calibre of expertise possessed of the majority of men and women who make up Ontario's Civil Service but was also struck by their willingness, almost without exception, to accept and work with the Ombudsman's office in a spirit of cooperation that made the task of the Ombudsman in carrying out the duties of the office a great deal easier than otherwise would have been the case. All of this is by way of lengthy preface to my suggestion that insofar as the Ombudsman's office is concerned, complaints about mistakes on the part of the Civil Service should be viewed as exactly that - that is to say, mistakes, which can occur in any large organization manned by individuals - but devoid of any prejudice, malice, favour or forethought.

Still dealing with the conceptual aspect of this relationship, how should the Ombudsman's office be regarded from the point of view of the Civil Service? It is fundamental that both the Ombudsman's office and the Civil Service are apolitical and impartial in nature. Each is staffed by those dedicated to the service of the public within the confines of the established policies and the programmes of the Legislature, and neither has any ulterior political axe to grind. Bearing in mind my earlier comments about mistakes necessarily occurring from time to time, it is suggested that those occasions on which the Ombudsman's ex post facto review enables such mistakes to be brought to the attention of the Civil Service should be viewed as simply the operation of another institutional check to guard against error and as such very sincerely

welcomed by the Civil Service and in no way viewed as a threat to its authority.

Dealing with the question of how, practically, the Ombudsman and the Civil Service might facilitate the resolution of complaints, in my view the linch pin upon which this issue turns is the element of trust. Reference in this regard might again be had to the comments of Mr. Herridge who stated:

"I am aware that survey studies indicate that most civil servants do not perceive the Ombudsman as a serious threat to them and do not alter their behaviour as a result of his existence. I would suspect, however, that most civil servants do at least have in the back of their minds a constant realization that the Ombudsman could at some future date enter the scene and challenge the validity of the decisions being made today. The knowledge of a potential investigation of one's work must inevitably have some effect on the mental climate in which the work is carried out. It is for this reason that I think it is absolutely essential for a governmental department or a ministry to develop actively with the Ombudsman's staff a climate of mutual trust, openness and candour."

It is obvious that the sheer numbers, not to mention the complexity of many of the complaints received by the Ombudsman's office, preclude the Ombudsman himself from personally communicating with his counterpart in the Civil Service concerning each and every complaint. At the same time, I was concerned to establish a procedure which would allow for a regular nexus between the ministries and agencies of government and the Ombudsman's office believing that such a nexus was integral to the development of this feeling of trust. One concept that attracted my attention in the course of my study of Ombudsmen's offices in other jurisdictions was the

practice instituted in France whereby the office of the Médiateur had a contact or "correspondent" in each ministry of government. I queried the advisability of proposing that this practice be instituted in Ontario and enlarged upon to the extent that the "correspondent" in the Ontario ministries be a member of the Ombudsman's office or, alternatively, although appointed from within the respective ministries of government, be granted leave of absence from that ministry during the period of time that they served as a liaison for the Ombudsman's office (for which period they would be compensated by the Ombudsman). In the end I rejected this proposal for the basic reason that however attractive in principle, the fact remains that a man cannot serve two masters. It would be unrealistic and unfair to ask a ministry employee to transfer his or her allegiance to the Ombudsman for a given period of time and, similarly, it would be inconceivable that a member of the Ombudsman's office assigned to a particular ministry would be granted full and unrestricted access to that ministry's deliberations.

Upon consideration I formed the view that trust in the context of which I am speaking has as its foundation a conviction on the part of each organization that the other has performed its homework carefully and competently and this is especially so in the case of the Ombudsman's office because, after all, it is the newcomer on the scene. In order to achieve this objective my conclusion was that such an attitude may best be fostered by specialization in the Ombudsman's office wherever possible; that is to say, an arrangement whereby specific personnel are assigned

to dealing with a specific category of complaints for a specific period of time. And at the same time, in the ministries and agencies of government it is my suggestion that there should always be one or more individuals assigned to the task of serving as a liaison with the Ombudsman's office in order to assist in the processing of complaints within that department, a plan which has been successfully implemented in respect of some governmental organizations in Ontario. These persons remain very much ministry personnel, but come to know the Ombudsman's personnel, the complaints and investigations pertaining to that ministry and the status of those investigations. Such an arrangement should help to ensure that insofar as the Ombudsman's office is concerned investigations are at all times characterized by the sort of knowledge and expertise in which those in the Civil Service can come to have confidence, and at the same time assist in the growth of a relationship founded on mutual trust and respect on the part of each for the opinions of the other.

10. The Ombudsman's Relationship with Ministers of the Crown

In order to appreciate the following remarks regarding the relationship which in my view ought to exist between the Ombudsman and appointed Ministers of the Crown, it is important to reiterate that both the Civil Service and the Ombudsman's office are sources of apolitical advice to a Minister and impartial in nature. Having regard to the character of the Ombudsman function, there are bound to be instances when the administration and the Ombudsman disagree on particular issues. When one considers the frequency with which two parties, both acting in good faith, come to contrary conclusions based on precisely the same data, neither of which is necessarily absolutely right nor absolutely wrong, this should come as no surprise. At the same time, common sense will confirm that on at least a proportion of those occasions, the view urged by the Ombudsman will be the preferable one. Notwithstanding, there may be discerned to this point in Ontario a tendency for Ministers of the Crown to close ranks with the Civil Service in any situation in which the Civil Service and the Ombudsman have arrived at conflicting viewpoints regarding a particular matter. The reason for this alignment is quite clear and was referred to in a statement made by Mr. Arthur J. Herridge on the occasion of the 1977 Canadian Conference of Legislative Ombudsmen in the following terms:

"...realistically a Minister is likely to be basically supportive of his Ministry's civil service. After all, the Ombudsman is reviewing what are fundamentally administrative decisions, and the Minister is well

aware of the difficult, often sensitive deliberations that have taken place prior to the formulations of the Minister's position. ...[C]ommon administrative practice dictates that once the Minister is convinced of the reasonableness of his administration's position on the matter, he will vigorously defend that position."

All the same, while this tendency may be understandable, it is not necessarily logical, since taken to its extreme it is to imply that the actions and decisions of the Civil Service are infallible, and yet it was precisely because this is not the case that it was recognized that there is a need for an Ombudsman's office.

The ultimate efficacy of the Ombudsman's office relies in large part upon the obligation incumbent upon the responsible Minister of the Crown to keep an open mind in any situation where the administration of his ministry, most probably embodied in the person of his Deputy Minister, is at odds with the Ombudsman on a particular issue. In other words, it implies that any automatic response on the part of the Minister to support his administration on every occasion that it finds itself in conflict with the recommendations of the Ombudsman is both illogical and incompatible with the balance that ought to exist between the Civil Service and the Ombudsman. All of the foregoing requires that a Minister of the Crown maintain a position of neutrality in any matter made the subject of a report by the Ombudsman, dealing with the recommendations of the Ombudsman's office as coming from a source equally expert and impartial as his own ministry, and the Minister must refrain from any tendency to favour the position adopted by the administration serving his ministry simply because it is his ministry.

In view of the foregoing analysis I was particularly interested in the remarks made by M. Robert Normand, Deputy Minister of Intergovernmental Affairs for the Province of Quebec, also made at the time of the 1977 Canadian Conference of Legislative Ombudsmen. Speaking on this very topic M. Normand stated as follows:

"You must first realize that Deputy Ministers are not candidates for suicide. They may be very good candidates to become crazy but not to commit suicide. I will tell you how I have handled these cases and I have had some in the past. What I usually do is to get into a discussion with the Ombudsman and when I realize that he wants to take a stand which I am against, I try to find out if he's serious about it or not. If it is not an important matter, then I will not say a definite no. I tell him that I'll a second look at it. Then I'll go and see my Minister and I'll discuss the matter over with my Minister. And then I'll try to give both sides of the question to my Minister, honestly. If the Minister realizes that his Deputy does not always present him with all the aspects of a question about which he has to take a decision that he has to answer for in front of the public, he will fire the Deputy after a while. So I have to be honest if I want to stay in office, and my Minister would know that. I would give him both sides of the question. ... and then we would come to a decision. I may still disagree and if I feel this is important enough and my conscience cannot accept that, then the only solution for me is to go away. This has not yet happened. It is not that my conscience is that wide, but my Minister was reasonable. And I even cited an example in the text that I delivered earlier, where I was in disagreement with my Minister and finally the Minister opted for a solution that would go along the lines of the recommendation of the Ombudsman. We discussed

the amount suggested by the Ombudsman and we lowered it. That was my part of the game. And then the case was settled."

Obviously the Ombudsman's relationship with the Minister of the Crown cannot be segregated from his relationship with the Deputy Minister in the respective ministry. I have already discussed how this relationship must be one which fosters mutual trust and cooperation. A delicate balance is required; the relationship must not be so close that a complainant's interests are unconsciously compromised and yet antagonism and confrontation will rule out agreement and its potential for effectiveness. Of course, as already indicated, complete agreement between the Ombudsman and the Deputy Minister will not always result. However, in the event the Minister elects to opt for the viewpoint advocated by his Deputy Minister, provided he has maintained an open mind, the Ombudsman may be without complaint. On the other hand, if after considering both sides the Minister elects to opt for the position espoused by the Ombudsman, similarly his Deputy Minister should not feel that there has been any lack of confidence expressed in him.

11. The Budget for the Ombudsman's Office

Section 10 of The Ombudsman Act, 1975 provides that:

"The salary of the Ombudsman and the expenses required for the operation of his office are payable, until the 31st day of March, 1976, out of the Consolidated Revenue Fund and thereafter out of moneys appropriated therefor by the Legislature."

Since the Ombudsman's office first submitted a budget in 1976 the practice has been to submit these estimates to the Board of Internal Economy for preliminary examination. More recently, as was noted previously, the Chairman of the Select Committee on the Ombudsman has accepted the invitation of the Board of Internal Economy to observe the initial review of the Ombudsman's estimates bearing in mind that the Chairman is at liberty to discuss his observations with the other members of the Select Committee.

In the past this procedure has functioned satisfactorily but the principle and the appearance of this mechanism of approval to my mind leaves much to be desired. As I have stated and restated, in terms of the Ombudsman's office one principle is paramount; the Ombudsman's office must be free of any possibility of pressure, political, executive or administrative, and seen to be so. The Legislature should be at pains to ensure that there is no suggestion that the Government is in a position to control the Ombudsman's budget, and therefore hobble the office in its efforts to carry out the mandate assigned to it. This is precisely the reason why the Board of Internal Economy which numbers among its members three Ministers of the Crown is an inappropriate body to review the Ombudsman's estimates and its function in this regard should be discontinued.

On the other hand, the Select Committee on the Ombudsman would appear to be an ideal vehicle for canvassing the office's needs and pursuing its estimates. Not only is the Select Committee the body with the most knowledge, experience and insight into the operation of the Ombudsman's office but such a procedure would more readily reflect the situation of the Ombudsman as the agent of the Legislature. This recommendation is in accord with the Report of the Select Committee on Guidelines for the Ombudsman tabled December 11, 1975 which recommended that a permanent Committee of the Legislature be established which might as part of its responsibilities review the estimates of the office of the Ombudsman. The Morrow Committee advocated that a review of the Ombudsman's estimates be within the Select Committee's terms of reference. In addition, in its Second, Third, Fourth and Fifth Reports the Select Committee has reiterated its recommendation that its Order of Reference be expanded "to provide that it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate".

I concur with this recommendation. Indeed, I go further than the Select Committee in that the Committee's recommendation envisages receiving and considering the estimates of the Ombudsman as they become available from the Board of Internal Economy and thereafter reporting upon them as the Committee considers appropriate to the Legislature. In my view, the review by the

Board of Internal Economy should be eliminated. The Select Committee will therefore replace the Board of Internal Economy for the purpose of providing a preliminary review of the estimates before they are tabled in the Assembly and the amount Select Committee determines to be supported would then appear in the printed Estimates. The Legislature would therefore vote on figures truly scrutinized by their own representatives and without any overtones of Cabinet or Government control.

An expansion of the Committee's mandate in these terms would underline the necessity for the Committee to remain sensitive to the requirement of the absolute independence of the Ombudsman's office. Control having political overtones or the suggestion of such would be just as offensive as control by the executive or the appearance of such. Certainly, if this jurisdiction were conferred upon the Select Committee it would emphasize the need for a cessation of the hostility and the requirement of a close partnership between the Ombudsman and the Select Committee.

One final matter that may be appropriately dealt with under this heading is the question of the size of the budget for the Ombudsman's office. The budget approved for the Ombudsman for the present fiscal year is four million, one hundred and sixteen thousand dollars (\$4,116,000.00). There are some who have stated that they consider this amount to be overly generous. I have said before that there is no appointed office in the public service that is more especially the property of the people than the office of the Ombudsman. In the Province of Ontario, the Attorney General who is responsible for providing the prosecutors who prosecute us

and the judges who try us has a budget of more than one hundred and thirty million dollars a year. The Ministry of Correctional Services which is responsible for keeping us in jail has a budget of about one hundred and fifty million dollars a year. The Solicitor General who is responsible only in part for policing the province similarly has a budget of approximately one hundred and fifty million dollars a year. The Revenue Ministry that collects the moneys from us to help to defray the costs of these ministries and agencies of government has a budget in excess of two hundred million dollars a year. To do all of these things these various ministries and agencies have to be highly staffed and heavily financed. An Ombudsman does not do any of these things. He does not prosecute anyone. He does not try anyone. He does not put anyone in jail. He does not police anyone nor collect money from anyone. The Ombudsman investigates complaints and if there is merit in those complaints, the citizen knows that the Ombudsman will support him to the best of his ability and that the total cost to him will be only a fraction of the cost of all of the other ministries and agencies of government. I repeat that it is an office that belongs more especially to the people than any other office in the public service. A budget in the approximate amount of four million dollars is adequate to the job but certainly not too much having regard to all the circumstances including the need on the part of the Ombudsman, like everyone else in government, to adhere to policies of economic restraint.

12. Suggested Amendments to The Ombudsman Act

(i) Section 1. (a) - "Governmental Organization"

Present:

1. In this Act,

(a) "governmental organization" means a Ministry, commission, board or other administrative unit of the Government of Ontario; and includes any agency thereof;

Suggested:

1. In this Act,

(a) "governmental organization" means an organization set out in the schedule annexed to this Act and includes the members and employees of the governmental organization.

Suggested further clause:

...and not so as to limit the generality of the foregoing, includes a ministry, board, commission or other administrative unit of the government of Ontario and includes any agency thereof.

Commentary

Mention has already been made regarding the problems encountered with respect to the interpretation of the definition "governmental organization" found in Section 1. (a) of The Ombudsman Act, 1975 and the problems that might be anticipated with any such definition that purports to be exhaustive. Accordingly, as set out in the section concerning "Jurisdiction", it is recommended

that the Act be amended so that the term "governmental organization" refers to the departments and agencies of government specified in a Schedule to the Act. An example of the type of Schedule envisioned in this regard may be found in the Ombudsmen Act 1975 for New Zealand. As well, in order to keep the Schedule current a new section could provide that additions to the Schedule be accomplished by Order-in-Council in order to avoid the complicated process of amending the Act on every occasion that a new agency is created or it is deemed advisable to further extend the Ombudsman's jurisdiction. On the other hand, in order to avoid any suggestion that the Ombudsman is open to interference by the Government of the day, it is suggested that for the time being deletions to the Schedule should only be by way of formal amendment. Of course, as was similarly discussed in the portion concerning "Jurisdiction", this Schedule should include as of its proclamation agencies of municipal government and those organizations established by statute, carrying out their functions according to statute and funded in whole or in substantial part by public money, and including specifically hospitals, nursing homes, universities and boards of education. Incidentally, an amendment in these terms and a listing of governmental organizations within the Ombudsman's jurisdiction in a Schedule would serve to eliminate a related area of ambiguity, namely, instances where a judge, ordinarily excluded from the application of The Ombudsman Act, 1975 by virtue of Section 14 (a), sits as a persona designata under a certain act, for example, as a Board of Reference under The Detention Act.

(ii) Section 6 (1) - The Ombudsman's Salary

Present:

- 6.-(1) The Ombudsman shall be paid
a salary to be fixed by the
Lieutenant Governor in Council.

Suggested:

- 6.-(1) The Ombudsman shall be paid
a salary in an amount equal to
the salary paid from time to
time to a Judge of the Supreme
Court of Ontario.

Commentary

The Act provides that the salary of the Ombudsman shall not be reduced except on the address of the Assmebly but does not provide for increases in the Ombudsman's salary. The simple reason for the suggested amendment is to ensure that the Ombudsman will receive automatic increments in salary without having to go hat in hand to the Government to request such increments.

(iii) Section 12 - Special Reports

Present:

12. The Ombudsman shall report annually upon the affairs of his office to the Speaker of the Assembly if it is in session or, if not, at the next ensuing session.

Suggested:

- 12.-(1) The Ombudsman shall report annually upon the affairs of his office to the Speaker of the Assembly if it is in session or, if not, at the next ensuing session.
- (2) The Ombudsman where he considers it to be in the public interest, or in the interest of any person or governmental organization, may make a special report to the Legislative Assembly, or comment publicly respecting any matter relating generally to the exercise of his duties under this Act, or to a particular case investigated by him.

Commentary

The combined effect of Sections 12, 13, 22 and 23 of the Act is that the Ombudsman in Ontario is precluded from disclosing any information received by him as Ombudsman except such matters as are necessary to establish grounds for his conclusions and recommendations contained in a report made by him. Reports are either his reports to the Legislature upon the affairs of his office which may be made annually or more frequently as the case may be, or reports pursuant to Section 22 following upon a complaint which

the Ombudsman's investigation has found to be supported. In addition, the Ombudsman has an obligation to inform every complainant of the results of his investigation which must necessarily entail disclosure of some information, but only to the complainant. In brief, while the governmental agency or the complainant may elect to release to the public details concerning the Ombudsman's investigation upon receipt of the latter's report, there is no power in the Ombudsman to release information to the public either during an investigation or upon its completion subject to the limited exceptions where 1) a complaint results in a report being laid before the Legislature and details may thereby come to the attention of the public, and 2) certain details concerning an investigation in a very summary form may become public upon the tabling of the Ombudsman's annual report. In the latter case, if the Ombudsman reports even semi-annually, this will mean that the first public exposure of the Ombudsman's conclusions and recommendations as well as the basis for them may only come about as much as six months after the completion of his investigation.

One example of the unfortunate consequences which can flow from this stricture upon the Ombudsman was demonstrated by an investigation conducted during the first year of the operation of the Ontario office. A young man in custody in an Ontario Correctional Institution alleged that he had been homosexually raped by two inmates while other prisoners watched, and he also contended that the attacks continued despite warnings that correctional officers were nearby. The inmate subsequently informed

the institution's officials of the alleged attack and was placed in the infirmary. Four days later he escaped and was at large for a period of 25 days. During the period of his escape, his allegation became public knowledge as a result of his contacting a member of the news media. The Ombudsman's investigation into the inmate's allegation included a review of the man's court hearing on the charge of being unlawfully at large. At his trial, his counsel suggested that the inmate fled the institution in question because he feared reprisals from other inmates for having reported the alleged assault, but the court, after hearing evidence from the alleged assailants and correctional officers, concluded that the inmate had lied about the sexual assault, possibly in the hope of obtaining his instant release from custody. The Ombudsman arrived at the same conclusion as a result of his investigation, and a report along these lines was prepared and delivered to the Minister of Corrections. Despite the fact that the allegation of assault against the other inmates and suggestions of neglect by some correctional officers had been publicly ventilated, the Minister declined to make the report public. He indicated that the language used in the report was too explicit and he also expressed concern about the effect of publicity on the complainant's rehabilitation. One might well ask, what about the rehabilitation of the two persons who were alleged to have assaulted the complainant and similarly what about the exoneration of the guards who were supposed to have turned a blind eye to the attack? Were they not also entitled to have their reputation considered? In my view the decision of the Minister to withhold

release of this report was unfair to the inmates alleged to have assaulted the complainant, the guards, the penal institution and the officials of the Ministry of Corrections. Just as it is important for an Ombudsman to expose administrative abuse, it is important that he enhance public confidence in the administrative arm of government where appropriate, and this purpose cannot be achieved in circumstances where a Minister of the Crown chooses not to make public a report prepared by the Ombudsman which not only finds a widely publicized complaint to be unsupported but absolves and exonerates ministerial employees and officials from any wrongdoing. In the result, an investigation conducted in August, 1975 only became public in an abridged form in the First Annual Report dated January 10, 1977.

Having regard to situations such as the foregoing, it is my very definite conclusion that the prohibition against the release of information to which the Ombudsman is presently subject is unnecessarily restrictive and inhibits the effectiveness of the Ombudsman's office. The power to make public a report where, in the discretion of the Ombudsman, it is in the public interest to do so is a power which I strongly feel is integral to the function of the Ombudsman's office. Obviously, consideration would have to be given in the exercise of this power to the sensibilities and wishes of any individual complaint so as to avoid any erosion of confidence on the part of the public that matters would not be indiscriminately made public, but I do not consider this a major obstacle.

Such a power in no way derogates from the present powers which the Ombudsman has been accorded and, judiciously exercised, can mean the avoidance in the future of the sort of situation described above.

(iv) Section 13 - Confidentiality

Present:

13-(1) Before commencing the duties of his office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with subsection 2, disclose any information received by him as Ombudsman.

(2) The Ombudsman may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

Suggested:

13-(1) Before commencing the duties of his office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with subsections (and the numbers would change here, probably to (4) and (5)), disclose any information received by him as Ombudsman.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this act, divulge any information received by him under this act.

(3) Every employee of the Office of the Ombudsman, before performing any duty as an employee of the Ombudsman, shall take and subscribe before the Ombudsman or a person designated in writing by the Ombudsman (a) the following oath of office and secrecy:

"I, (name), do swear (or solemnly affirm) that I will faithfully discharge my duties as an employee of the Ombudsman and will observe and comply with the laws of Canada and Ontario and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Ombudsman, so help me God" (which is omitted if it is an affirmation), and (b) the following oath of allegiance:

"I, (name), do swear (or solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth II, (or the reigning sovereign), her heirs and successors according to law, so help me God" (which is omitted in an affirmation).

13-(4) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

13-(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers there are special circumstances in which public knowledge is essential in order to further the investigation.

13-(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose any matter that, in his opinion, is necessary to (a) further an investigation or, (b) prosecute an offence under this Act or, (c) establish grounds for his conclusions and recommendations made in a report under this Act.

13-(7) The failure of an employee of the Office of the Ombudsman to take and subscribe, or to adhere to either of the oaths required by subsection (3) may be considered as cause for dismissal.

Commentary

At the present time, there is no specific duty of confidentiality imposed upon the Ombudsman's staff by The Ombudsman Act, 1975. the only reference in this regard being that already reproduced in Section 13.(1). Practically, the procedure adopted in the circumstances is to have each member of staff as a condition of employment take an oath upon commencement of

his or her duties in the Ombudsman's office in the following terms:

OATH OF OFFICE AND SECRECY

I, _____
do swear that I will faithfully discharge my duties as an employee of the Office of the Ombudsman and will observe and comply with the laws of Canada and Ontario, and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Ombudsman. So Help Me God.

The difficulty with this situation is that the administration of the above-mentioned oath and the performance of the duties spelled out in that oath are not in accordance with any specific statutory mandate. It is my view that it would be preferable if this obligation on the part of the Ombudsman's staff were not left in this state of relative uncertainty but were incorporated into the statute as indicated above. It should be noted that in the event the suggested Section 13 were incorporated into the Act it follows that Section 19(2) should be deleted.

(v) Section 14 - Non-Application of the Act to
Decisions of Cabinet

Present:

14 This Act does not apply,

(a) to judges or to the functions
of any court; or

(b) to deliberations and proceedings
of the Executive Council or any
committee thereof.

Suggested:

14-(b) to decisions, deliberations and
proceedings of the Executive Council
or any committee thereof.

Commentary

It is inconceivable that there be a decision of Cabinet in the absence of any proceedings or deliberations leading up to such decision. Yet there are those who argue that the Ombudsman is empowered to investigate decisions of Cabinet because of the omission of the word "decision" in Section 14(b). In order to resolve any remaining ambiguity in this area and so that the Act will reflect the original intent of the Legislature it is suggested that the word "decision" be added to the subsection.

(vi) Section 15(4)(a) - Right of Appeal Outstanding

Present:

15-(4)(a) In respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired.

Suggested:

15-(4)(a) In respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired; provided that the Ombudsman may conduct an investigation notwithstanding that the complainant has or had such right of appeal, if by reason of special circumstances it would be unreasonable to expect him to resort or have resorted to it.

Commentary

By virtue of the present Section 15(4)(a), in situations where a preliminary investigation of the complaint discloses a right of appeal or a right to compel a hearing which has not been exercised, the Ombudsman is required to advise the complainant that he must refrain from investigation until any appeal rights have either been exercised or the time for their exercise has expired. Obviously, this limitation can result in hardship in some cases. Situations can be readily envisaged where a complainant has a right of appeal and there remains a period of time within which it may be exercised, yet to exercise that right of appeal would be simply inappropriate in the peculiar circumstances of the case. Examples that come to mind are situations wherein the remedy will surely be granted but the costs of the appeal process far outweigh the benefits of the result, and similarly instances wherein the time required to either appeal or await the expiry of the time in which to exercise that right of appeal would work a particular hardship upon an appellant, again in circumstances where relief will almost inevitably be awarded. In addition, one cannot overlook the fact that inherent in this restriction is the concomitant problem for the Ombudsman who is asked to advise complainants, albeit perhaps informally, whether to follow through with an appeal or alternatively allow the time for appeal to expire and then complain to the Ombudsman's office. In observing and assessing the operation of Ombudsmen's

offices in other jurisdictions I have been impressed by the large number of Ombudsmen who have been afforded a discretion in regard to the question of an outstanding right of appeal, and I have been equally struck by the wisdom of allowing this discretion so as to allow for the Ombudsman's immediate intervention where such is warranted notwithstanding any right of appeal.

(vii) Section 15(5) - Application to the Supreme Court of Ontario

Present:

15-(5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.

Suggested:

15-(5) If any question arises (a) whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act or

(b) in connection with the exercise of any of his powers or duties under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.

Commentary

This suggested amendment would simply give the Ombudsman a wider power to make application to the Supreme Court for a determination of the extent of his powers beyond the question of his jurisdiction.

(viii) Section 17(2) - Communications with Inmates

Present:

17-(2) Notwithstanding any provision in any Act, where any letter written by an inmate of any provincial correctional institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school or facility.

Suggested:

17-(2) Notwithstanding any provision in any Act, when any letter by the Ombudsman or by an inmate of any provincial correctional institution or training school, or a patient in a provincial psychiatric facility, is addressed to the Ombudsman or to the inmate, or for the patient as the case may be, it shall be immediately forwarded, unopened to the Ombudsman or to the inmate or to the patient, as the case may be, by the person for the time being in charge of the institution, training school or facility.

Commentary

Ironically, whereas The Ombudsman Act, 1975 recognizes the privacy of mail addressed to the Ombudsman from an inmate of any provincial correctional institution or training school or any patient in a provincial psychiatric facility, there is no corresponding statutory protection for the privacy of mail received

by inmates or patients from the Ombudsman's office. Recognizing that the spirit of the Act demands such protection, this oversight was brought to the attention of the heads of the Ministries involved resulting in an agreement to ensure confidentiality of communications from the Ombudsman as well as to him. At the same time this deficiency was brought to the attention of the Select Committee on Guidelines for the Ombudsman which reported to the Assembly on December 11, 1975. In that Report the Committee made the following recommendation:

3. The Committee wishes to point out that Section 17(2) of The Ombudsman Act, 1975, which provides for letters addressed to the Ombudsman by inmates of any provincial correctional institution or training school or patients in a provincial psychiatric facility are to be forwarded to the Ombudsman unopened by the person in charge of the institution, training school or facility, but neglects to set out that communications from the Ombudsman to any such person should be forwarded unopened to such person by the person for the time being in charge of such institution, training school, or facility. The Committee believes that the necessary legislative amendment to correct this error should be made.

A recommendation along these lines was reiterated in the Second Report of the Select Committee on the Ombudsman which was tabled on March 28, 1977. Notwithstanding the excellent cooperation received from officials of all Ministries and Departments with respect to the confidentiality of correspondence between the Ombudsman and inmates or patients of institutions concerned, be they provincial or federal, it is my recommendation that an obligation along the above-discussed lines should be incorporated into the legislation.

(ix) Section 19(4) - Consultation

Present:

19 - (4) The Ombudsman may in his discretion, at any time during or after any investigation, consult any minister who is concerned in the matter of the investigation.

Suggested:

19 - (4) The Ombudsman may in his discretion, at any time before, during or after any investigation, consult any person in order to attempt to assist in the resolution of the complaint or for any other reason.

Commentary

Rather than confining the Ombudsman to a consultation with the Minister concerned this amendment would afford the Ombudsman with a wider latitude when investigating a complaint while remaining within the intent of the legislation.

(x) Section 19(6) - Referring Breach of Duty or Misconduct

Present:

19 - (6) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any governmental organization, he may refer the matter to the appropriate authority.

Suggested:

19 - (6) Notwithstanding section 13, if, during or after an investigation, the Ombudsman is of the opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any governmental organization, he may refer the matter to the appropriate authority.

Commentary

This amendment would be required in the event the suggested Section 13 were introduced.

(xi) Section 22(3)(g) - "Other Steps or Recommendations"

Present:

22 - (3)(g) that any other steps should
be taken,
p. 31

Suggested:

22 - (3)(g) that any other steps or
recommendations should be taken,

Commentary

Due to an unfortunate oversight, The Ombudsman Act, 1975 as passed by the House did not contain an amendment to the original draft moved and agreed upon at the time of the debate on second reading of the Bill. Reference in this regard may be had to the remarks of James Renwick, M.P.P., and the Honourable J.T. Clement, then Attorney General, in the course of the debate. The relevant portion commences at pages 3167 and 3168 of the Hansard Report for June 19, 1975, dealing with the comments of Mr. Renwick as follows:

"...Item (g) gives me some concern: 'That any other steps should be taken.' I would like to ask the minister whether or not any other steps being taken would include a recommendation for compensation? In other words, is it clear from the language of subsection 3 that the report of the Ombudsman, if he is of the opinion that any other steps should be taken, can include a recommendation that monetary compensation be paid to rectify the error of the government in its administration? I would hope that the words would be broad enough, but whenever a report is to be made about money, I think there is always a warning sign that maybe the Ombudsman would feel he doesn't have the authority. I would hope he would feel that in a legitimate case he could, in his report, recommend that compensation be paid."

The debate continued on the subject at pages 3169 and

and 3170 as follows:

"Mr. Renwick: I would like very much to ask him [the Honourable Mr. Clement] to comment on item (g) of subsection 3 of section 22, 'that any other steps should be taken.' I would like the record clearly to show that if the Ombudsman feels that a monetary award is the only way in which an aggrieved citizen can be compensated for the damage which he has suffered, that, yes, he has the authority to give his opinion about that matter in his report; not necessarily that the government will implement the report, but that the recommendation for a monetary award by way of compensation, will not have to be seriously considered by the government as to whether it is justified in making the recommendation to this assembly that moneys be appropriated in order to provide compensation for a person who may have been aggrieved by the maladministration of the province.

Hon. Mr. Clement: I think we could overcome the problems raised by the hon. member by amending (g) to say 'any other steps or recommendations.' If that was his initial recommendation, then it would be caught in that section, and that would overcome it. If the member agrees with that, then I would so move.

Hon. Mr. Clement moves that subclause (g) of subsection 3 of section 22 be amended to read: 'That any other steps or recommendations should be taken'.

Motion agreed to.

Section 22, as amended, agreed to."

As already mentioned, this amendment did not find its way into the final draft of the Bill. Although this omission may be classified as a clerical error, it must nevertheless be amended by motion of the House. Accordingly, in order to provide for the concerns contained in Mr. Renwick's remarks and so that the Act will properly reflect the original intentions of the Legislature, it is my view that this Section should be formally amended as agreed to in 1975.

(xii) Section 23(2) - Informing Parties of Result of Investigation

Present:

23 - (2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Suggested:

23 - (2) The Ombudsman shall in any case inform the complainant and the appropriate governmental organization, in such manner and at such time as he thinks proper, of the result of the investigation.

Commentary

It may be noted that the Legislation as it is presently worded does not permit the Ombudsman to report to the government the grounds for his conclusions and recommendations in the event a complaint is unsupported. Section 22 contemplates the situation where a complaint is found to be supported whereas Section 23 speaks only of "informing the complainant". Again, it is my view that this is a serious inadequacy as there are many occasions in which the governmental organization would benefit from an explanation as to why a particular complaint was deemed unfounded, while at the present time this is not possible.

EPILOGUE

Having served as Ombudsman and having studied the office I am constantly struck by the amount of good it can accomplish. Whether it be the youth unjustly convicted of contempt of court and required to appeal the verdict whose costs were reimbursed through the intercession of the Ombudsman; whether it be the cottage owner who had been advised his lease in a provincial park would be renewed on the basis of which he had made substantial capital improvements to his premises and who was later given notice to vacate but whose lease was renewed following the investigation and recommendation of the Ombudsman; whether it be the employee in respect of whom the Workmen's Compensation Board only accepted that a back injury requiring surgery occurred at work because of the facts presented and the conclusions reached by the Ombudsman; or whether it be the prisoner whose sentence as a result of the Ombudsman's study and recommendation was acknowledged to have been calculated in a manner which would have required him to serve an unnecessary thirty days; these, out of the myriad of cases, are characteristic of the complaints brought to the Ombudsman. Each individual example reflects the incredible variety of ways in which an Ombudsman system can assist those who have suffered at the hands of bureaucracy regardless of race, colour, creed, station in life or financial circumstances.

The Ombudsman knows no boundaries in any of these areas. The Ombudsman is available to help anyone who speaks with a lone voice. Such a voice in dealings with the administration of govern-

ment is almost invariably reduced to a whisper; the Ombudsman can turn this whisper into a roar. Without an Ombudsman the ordinary citizen is lost as he seeks to find his way about the labyrinth of government; all this suddenly becomes easy with the intervention of the Ombudsman.

The public achieves a sense of security in the knowledge that there is a functionary who will investigate a complaint and upon finding that it has merit, will battle on behalf of the citizen with all the vigour at his command. At the same time, the knowledge that the Ombudsman is there uplifts the calibre of service the public servant will give. He will so conduct his affairs as to avoid future investigations by his office and the number of occasions when the citizen will need to have recourse to the Ombudsman will be diminished. Yet by maintaining his objectivity the Ombudsman likewise maintains the support and cooperation of the administration. Its members realize that the Ombudsman will vindicate their actions in the event a complaint is unwarranted. And all of this is accomplished at a cost which is but a minimal fraction of the total cost of government.

It surely follows that the office of the Ombudsman is such that there is none more important to the ordinary citizen. The Ombudsman is the little man's corridor of access to the seat of power. He is his assurance of fairness and justice at the very core of the governing process. He is the ordinary man's advocate, his bulwark, his defender. There is no other appointed office in the public service that belongs more especially to the people themselves. The whole concept is incredible and I predict that it will grow and spread in free countries throughout the world.

APPENDIX A - ACKNOWLEDGEMENTS - PERSONS CONSULTED
IN THE COURSE OF THE INVESTIGATION

APPENDIX A

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APPENDIX C - REPORT OF HICKLING - JOHNSTON LIMITED
DATED MAY 29, 1979 - ORGANIZATION FOR
OMBUDSMAN EFFECTIVENESS

REPORT

*

ORGANIZATION FOR OMBUDSMAN EFFECTIVENESS

*

The Ombudsman of Ontario

*

May 29, 1978

TABLE OF CONTENTS

	<u>PAGE</u>
A MANAGERIAL PERSPECTIVE ON THE ROLE OF THE OMBUDSMAN	1
CONSTITUTIONAL AMBIGUITIES	1
THE OMBUDSMAN ALONE	1
ADMINISTRATIVE FLEXIBILITY	2
THE NEED FOR A STRONG AND BALANCED ORGANIZATION	2
THE MANAGEMENT CHALLENGE	3
THE QUANTITY OF ACHIEVEMENT	3
QUALITY AND THE OMBUDSMAN'S INTENT	3
FINANCIAL FORECASTS FOR FISCAL BALANCE	4
Exhibit 1: Ombudsman's Office: 1978 Estimated Expenditures	
	Facing Page 4
Exhibit 2: Forecast of Financial Status of the Ombudsman's Office with Stable Case Load	
	Facing Page 5
Exhibit 3: Graphical Presentation of Forecast of Financial Status	5
Exhibit 4: 1983 Shortfall Analysis	6
Exhibit 5: Forecast of Financial Status: Non- Jurisdictional "Quality" Lowered	
	Facing Page 7
PRODUCTIVITY IMPROVEMENT IS A HIGH PRIORITY	7
THE IMPORTANCE OF PROFESSIONAL MANAGEMENT	7

THE COMPONENTS OF AN ORGANIZATIONAL STRATEGY	9
Exhibit 6: The Components of an Organizational Strategy	
	Facing Page 9
OMBUDSMAN INTENT AND POLICY	9
HUMAN RESOURCES	10
INVESTIGATIVE TECHNIQUE	11
LEGAL TECHNOLOGY	11
SYSTEMS TECHNOLOGY	12
AN ORGANIZATION PLAN FOR THE ONTARIO OMBUDSMAN	13
Exhibit 7: An Organization Plan for the Ontario Ombudsman	
	Facing Page 13
FRAMEWORK	13
THE EXECUTIVE	14
. The Ombudsman's Group	14
. The Executive Director	15
THE OPERATING DIRECTORATES	16
. Directorate of Investigations: Corrections and Psychiatric Services	16
. Directorate of Investigations: Workmen's Compensation Board and Community and Social Services	17
. Directorate of General Investigations	17
. Directorate of Hearings and Regional Services	17
TECHNICAL DIRECTORATES	18
. Chief Legal Officer and Director of Complaint Policy	18
. Controller and Director of Management Services	19
MANAGEMENT INTEGRATION	20

IMPLEMENTATION	22
PRINCIPLES OF ORGANIZATION CHANGE	24
A CONCRETE SIGNAL	24
OPEN COMMUNICATION ON THE CONCEPT	24
CAREFULLY PLANNED CHANGE	24
PARTICIPATIVE CHANGE	24
EMPHASIS ON GROUP PROCESS	25
STAGES OF ORGANIZATION CHANGE	26
STAGE I - A CONCRETE SIGNAL	26
STAGE II - OPEN COMMUNICATION ON THE CONCEPT	26
STAGE III - CAREFULLY PLANNED CHANGE	26
STAGE IV - PARTICIPATIVE CHANGE	27
APPENDIX A: ALTERNATIVE FINANCIAL SIMULATIONS	
Exhibit A-1: Stable Case Load	29
Exhibit A-2: Case Load Rising at 3% per year	30
Exhibit A-3: Case Load Declining at 3% per year	31
Exhibit A-4: Jurisdictional Case Load Declining	32
Exhibit A-5: Non-Jurisdictional Case Load Declining	33
Exhibit A-6: Jurisdictional Case Load Rising	34
Exhibit A-7: Non-Jurisdictional Case Load Rising	35
Exhibit A-8: Jurisdictional Case Load Rising, Non-Jurisdictional Falling	36

A MANAGERIAL PERSPECTIVE ON THE ROLE OF THE OMBUDSMAN

CONSTITUTIONAL AMBIGUITIES

Organization and management of the Office of the Ombudsman in Ontario presents a unique challenge. First of all, the role of the Ombudsman does not sit easily within the British Parliamentary context. It is a concept derived from the Swedish style of government which is based upon a different method of political representation and decidedly different relationships between ministers and the heads of those agencies responsible for public administration. In simplest terms, the role of the Ombudsman may conflict with the traditional role of the Member of the Provincial Parliament in acting in the interests of an aggrieved citizen -- and it may conflict with the accountability of ministers of the Crown for the administrative performance of departments, agencies, boards and commissions.

Nonetheless, the Ontario Ombudsman has been created by the Legislature and with the support of all political parties. In its brief history of two and one half years, the Office and the political system have been grappling with the definition of roles and relationships, with the dimensions of the Ombudsman's mandate and the nature of his accountability to the Legislature.

This is an important perspective to keep in mind, because the inherent ambiguities in the Office's role are a pervasive influence on its management processes -- particularly in the formative years.

THE OMBUDSMAN ALONE

Beyond these fundamental matters of role and relationship of the Office, there are other differences which set the Ombudsman apart from the general fabric of public administration in Ontario. The Ombudsman's Act confers powers directly upon the person of the Ombudsman. His appointment is for term, and he does not answer for the use of his powers through a minister of the Crown, but directly to the Legislature itself. He does not have access to a community of peers -- as do ministers -- in discharging his responsibilities, arriving at his judgements, or in rendering an account of his stewardship. Unlike most heads of Crown agencies, he does not have the benefit of a board of directors or advisory council to guide him in meeting the responsibilities defined for him in his Act.

The Ombudsman's job is a lonely one. By the terms of the legislation, the Ombudsman is not an office or an organization. The Ombudsman is a person, and the role and function are personified. In these ways, the Ombudsman's role is similar only to that of the Provincial Auditor, and unlike any executive position in industry. The Ombudsman is more than a Chief Executive Officer: he is the organization.

ADMINISTRATIVE FLEXIBILITY

The unique nature of the Office manifests itself in administrative matters as well. Unlike ministries of the Ontario Government, the Ombudsman is not necessarily bound by the administrative procedures established by the Management Board to govern the affairs of departments and many agencies of the government. In the selection, development and promotion of his staff, the Ombudsman is not bound by the law and practice governing the public service. And in preparation of his estimates of expenditure for approval by the Legislature, he is not bound by the practices and procedures laid down for departments and agencies which are accountable through ministers.

There are inherent advantages in the flexibility implied by this freedom, but with the flexibility goes the responsibility to develop and maintain administrative practices which are consistent with both good management and the contemporary view of acceptable public administration practice.

THE NEED FOR A STRONG AND BALANCED ORGANIZATION

These introductory remarks may be summed up by saying that in matters of both role and practice the Office of the Ombudsman is unique and the responsibilities heavy. The organization which supports the Ombudsman, therefore, must have extraordinary strength and balance. And it must have a responsiveness which is extraordinary as well. The Legislature appoints an Ombudsman for his values, character and leadership skills, not for his administrative abilities. The Office must be so organized as to respond to the *intent* of the Ombudsman, and this intent does not easily manifest itself in clearly defined and carefully documented policy. This implies flexibility within the Office to adapt to the Ombudsman's intent, and to the intent of Ombudsmen who may be appointed to succeed him in time. Together, these characteristics make up a tall order for organization and management.

THE MANAGEMENT CHALLENGE

THE QUANTITY OF ACHIEVEMENT

In the Spring of 1978, the Ombudsman and his staff can look to some impressive achievements in the short history of the Office. The Office has an established mandate, a clarity on its jurisdictional boundaries, an accomplished staff of more than 120 persons, increasingly well defined procedures for investigation, and a working methodology for seeking redress through the government and its agencies for the greater proportion of those complaints which fall within its purview.

In the year ended March 31, 1978, the Office received some 6,700 complaints from Ontario residents. Roughly 35% of these, or some 2,300, were within the Ombudsman's jurisdiction while roughly 65%, or some 4,400 were, for one or more of a variety of reasons, outside the Ombudsman's jurisdiction. These are concrete measures of the acceptance of the Office in the process of governance in Ontario, and the degree to which the Office is recognized in the Province as an avenue of recourse for the citizen.

QUALITY AND THE OMBUDSMAN'S INTENT

The dominance of complaints falling outside the Ombudsman's jurisdiction are a reflection of the Office's acceptance and of the difficulty the Office has in satisfying complainants. The figures speak to the confusion in the minds of Ontario citizens about the relative responsibilities of the Governments of Canada and Ontario, and the responsibilities of municipalities. The intent of the present Ombudsman has been to provide whatever reasonable guidance could be given the complainant in pursuing other avenues of redress. This is a major issue of the "quality of service" rendered by the Office. Indeed, quality of service is a problem the Ombudsman shares with other organizations in the service industries.

And, as always, there are costs associated with quality of service. We have made rough estimates that the direct cost of closing a jurisdictional case is approximately \$775.00, while the direct cost of handling a non-jurisdictional case is approximately \$100.00. It is not possible for the Ombudsman to substantially reduce the number of non-jurisdictional

EXHIBIT 1

OMBUDSMAN'S OFFICE
1978 ESTIMATED EXPENDITURES
IN THOUSANDS OF DOLLARS

OMBUDSMAN'S GROUP COMMUNICATIONS	\$ 763.0	18.5%
PICKERING	497.0	12.0%
ADMINISTRATION	620.0	15.0%
CASE SOLVING DIRECTORATE COST	2,249.0	54.5%
	<hr/>	<hr/>
TOTAL	\$4,129.0	100.0%

cases coming to his attention. It may be that, in time, citizens will come to better discern the finer points of jurisdiction, but such will likely be a gradual process. There is some choice in the way such complaints are turned aside. But it is the intent of the current Ombudsman that a high priority be placed upon leaving the citizen with the view that the Ombudsman cares, and that no citizen who approaches the Office should be turned away without a minimum of guidance. This is a concrete example of how the intent of the Ombudsman manifests itself in policy and practice.

FINANCIAL FORECASTS FOR FISCAL BALANCE

These remarks about quality of service provide a useful point of departure for examining the fiscal dimensions of the management challenge facing the Office over the next several years. Exhibit 1 is an estimated breakdown of expenditures in the Office for the fiscal year ended March 31, 1978. Of the some \$4.1 million, roughly 55% was spent by those directorates directly involved in handling complaints, a further 12% on the Pickering hearings, and about 15% for administration. The Ombudsman's group itself spent about 18% of the total budget.

Exhibit 2 details a number of assumptions used in projecting the financial dimensions of the Office ahead through 1983. Most notable of these, perhaps, is the assumption that costs in the Office will rise in accordance with an assumed inflation rate of 8%. In historical terms, this is a very high rate of inflation, but is not an unreasonable one for planning purposes in 1978. At the same time, it is assumed that the ability of the Legislature to match this inflationary increase is limited to 5%. This assumption takes into consideration the general fiscal balance of the Province. Exhibit 2 indicates, that with no increase or decrease in case load, the Office faces a potential shortfall in funds increasing to \$681,000 in 1983. This is a dilemma facing labour intensive organizations in the service industries throughout Canada, whether they be in private business or in government. It is one of the challenges of the era. Exhibit 3 displays the fiscal projection graphically. Other projections based on alternative assumptions about case load variation are included in Appendix A, and their effect on projected shortfall is summarized on the graph of Exhibit 4.

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE WITH STABLE CASE LOAD

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0 %
10. Annual Change in non-Jurisdictional Case Load = 0.0 %

YEAR*	PICKERING COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3208	4223	4116	107
1980	0	962	3465	4427	4296	130
1981	0	1039	3742	4781	4486	294
1982	0	1122	4041	5164	4686	477
1983	0	1212	4365	5577	4895	681
* Fiscal Year ending March 31						

EXHIBIT 3

GRAPHICAL PRESENTATION OF
FORECAST OF FINANCIAL STATUS

STABLE CASE LOAD

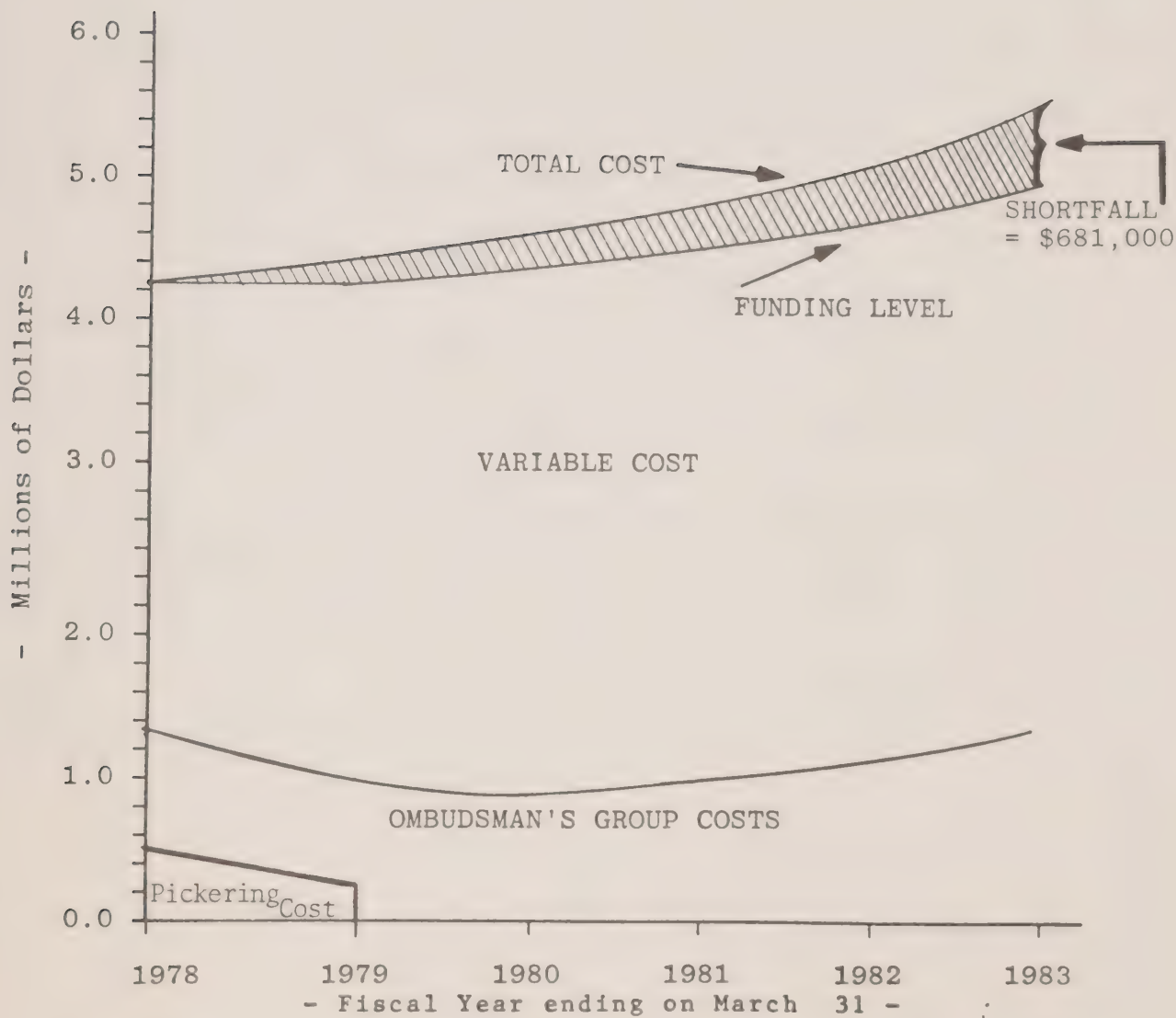
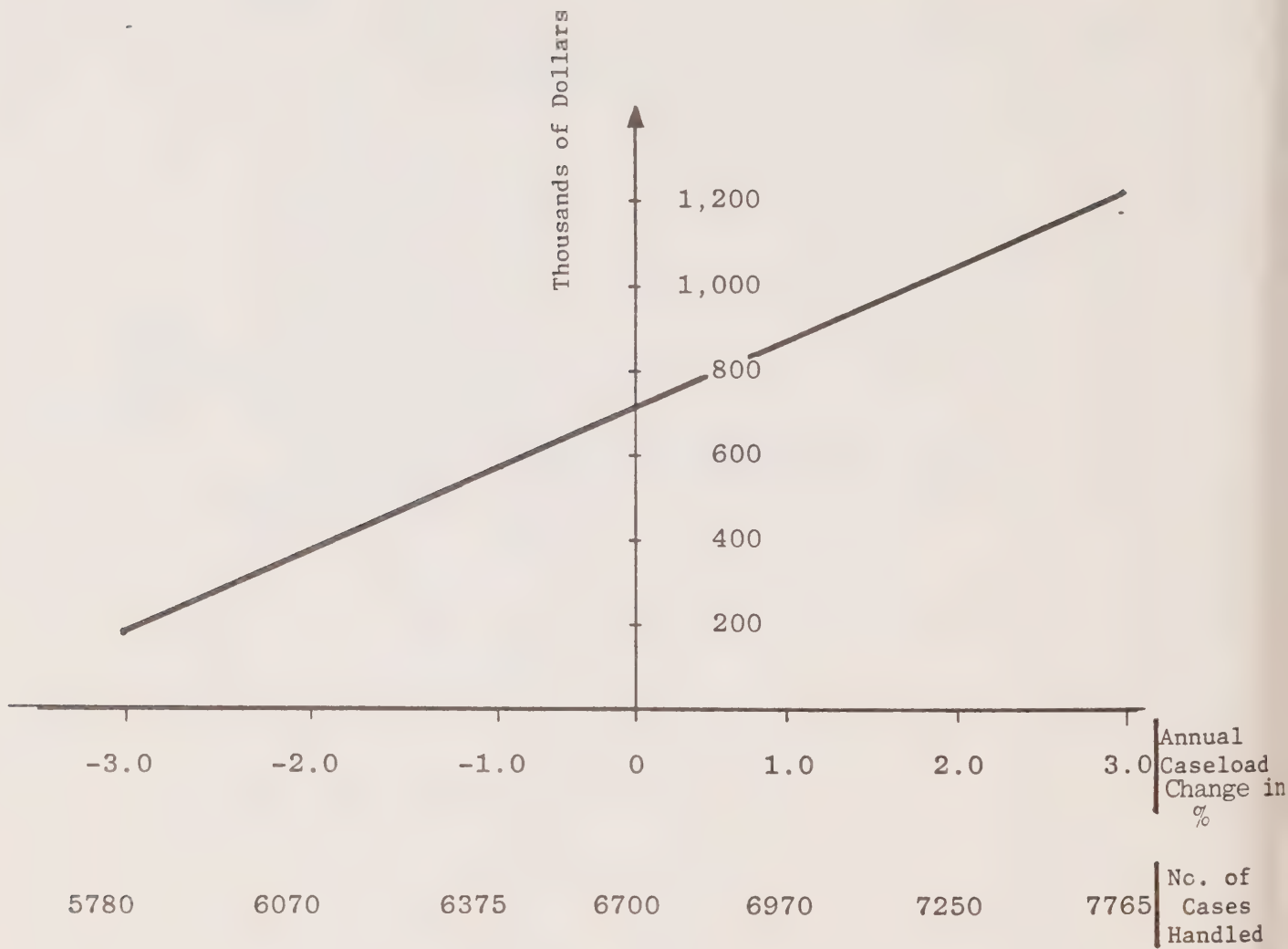


EXHIBIT 4

1983 SHORTFALL ANALYSIS



- 545 -

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0 %
10. Annual Change in non-Jurisdictional Case Load = -5.0 %

[illegible]

PRODUCTIVITY IMPROVEMENT IS A HIGH PRIORITY

There are several important points evident in the alternatives examined in Appendix A, but one of the more important has to do with the "quality of service" to non-jurisdictional complainants. Exhibit 5 illustrates the probable results of a reduction in assistance to non-jurisdictional cases, and is portrayed there in terms of a 5% compounded drop in the number of such cases addressed by the Office. This drop in service quality does reduce the shortfall in 1983, but not nearly as much as the relative volume of cases might suggest. This is because the costs of handling jurisdictional cases are nearly eight times those falling outside the Ombudsman's purview. While some cost savings could result from a frontal attack on non-jurisdictional cases, they would not be sufficient to address the fiscal shortfall facing the office. It is clear to us that cost savings through productivity improvement broadly across the Office are much more to the point. And they have a higher probability of being faithful to the Ombudsman's intent.

What this means for the Office of the Ombudsman is a high priority on productivity improvement over the next five years.

Improved productivity in the service industries is associated with better management technique and with the introduction of capital equipment to replace labour -- as it has been in the goods producing industries. A rough guide for the Office of the Ombudsman might be expenditure of some \$200,000 a year on computers, word processing equipment, management information systems and better management technique generally. We estimate that this will require, and provide the ability to achieve, productivity improvement of roughly 3.7% per year.

In practical terms, the person-hours required to close the average jurisdictional case would need to fall from some 50 hours in 1978 to 48.2 hours in 1979, to 46.5 hours in 1980, to 44.8 hours in 1981, to 43.2 hours in 1982, to 41.7 hours in 1983.

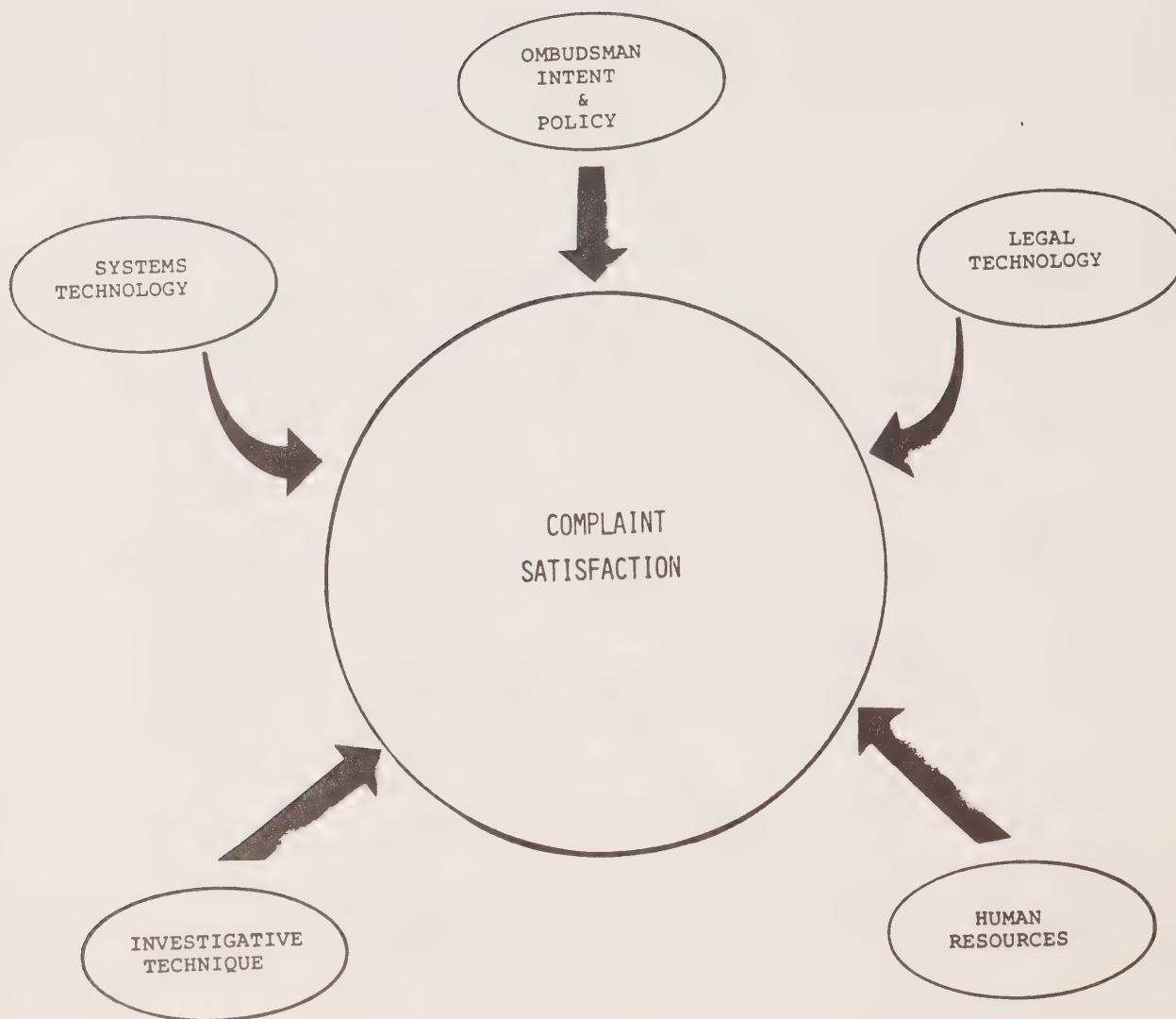
In our judgement these are workable objectives for the Office, and provide a quantitative dimension to the management goals of the Ombudsman.

THE IMPORTANCE OF PROFESSIONAL MANAGEMENT

What these financial and productivity projections illustrate is the importance of good management to the Office in the future. By this we

mean the very best in professional management which is goal oriented, draws on human skills and motivation, and uses the best available technology for achievement. In this way, the Office can fulfill the quality *intent* of the Ombudsman, and remain within the boundaries of fiscal responsibility. To achieve these ends, the Office requires an organization tailored to professional management.

THE COMPONENTS OF AN ORGANIZATIONAL STRATEGY



THE COMPONENTS OF AN ORGANIZATIONAL STRATEGY

Exhibit 6 summarizes the components of an organizational strategy for the Office of the Ombudsman. It focuses on *complaint satisfaction* as the underlying role of the Office. It is governed by *Ombudsman intent and policy* which defines the way in which that role will be carried out. It pursues complaint satisfaction through the management of *human resources*. And it draws upon *investigative technique, legal technology and systems technology* to do so in an efficient and effective manner.

OMBUDSMAN INTENT AND POLICY

Satisfied complainants are the product of the Office. The product needs to be seen in terms of both quantitative and qualitative dimensions. Six thousand seven hundred complaints in the year ending March 31, 1978 defines the overall quantitative dimensions. Two-thirds non-jurisdictional and one-third jurisdictional complaints defines the overall mix. Level of service to each type of complaint is a matter of product quality and, as outlined in the preceding section, a matter of Ombudsman intent and policy. Backlog, average case turnaround time and proportion of cases closed with a recommendation are quantitative measures of administrative performance which speak to both production and quality of that production.

It is clear from the volume of cases reaching the Office that the Ombudsman can be personally involved with only a very small proportion. Through the well developed process of Case Conferences in the Office, the Ombudsman has the ability to make his intent and policy clear on selected complaints, to give guidance to his organization on the appropriate way to proceed under particular circumstances, to define a body of precedent in the handling of certain types of complaints, to give guidance for dealing with the government organization involved and in dealing with the complainant. This process of Case Conference is the single most important leadership device the Ombudsman has to convey his intent and policy, and thereby define standards of quality for the organization.

But the great majority of cases must of necessity be handled by his organization within the envelope of intent and policy he lays down. Overall measures of performance, such as backlog and turnaround time, give the Ombudsman the ability to gauge the quantity and certain dimensions of quality in the product of the Office. But the handling of

individual complaints is, for the most part, a matter delegated within his organization. He must rely extensively on organization to make his intent and policy reality.

HUMAN RESOURCES

The quality, dedication and motivation of the some 120 employees of the Office are the most important factors governing performance. This is in large part a professional or quasi-professional work force. And there are several important principles which underlie successful organization and management of a work force of this type.

First of all, there must be a heavy reliance on the individual judgement of employees. In a managerial sense, this requires emphasis on a supervisory style within the Office which shapes that judgement and motivates efforts along channels which embody Ombudsman intent and policy in the treatment of individual complaints. There is a fine balance here between latitude for professional discretion and clear definition of task. It requires what the military call "man management" which implies close attention to the supervision and professional development of the individual. It means that the most important managerial roles within the Office are those directly involved with supervision. It implies a decentralization of responsibility and accountability. And it implies that the "personnel" function -- the staffing, training and development and replacement of human resources -- is embodied in the supervisory organization.

Secondly, an emphasis on team building and team management offers the best prospects for addressing issues like the requirement for sustained productivity improvement over the next several years. The way in which professional and quasi-professional work is conducted by individual employees determines trends in case costs and in case quality. It is important, therefore, that the quantifiable productivity improvement goals of the Office be shared with employees, and that the supervisory process engage their judgement and skills in finding ways to achieve them. This need manifests itself in several ways, but one of the more important is the way in which progress toward productivity improvement goals are measured and reported. We would caution, for example, against measurement systems which isolate individual performance within a work group and argue for scorekeeping techniques which report on overall group performance in a supervisory area. Regular reports on the average hours for case completion are best reported back to the group on the basis of group performance rather than individual performance. Peer pressure and supervisory responsibility are the best

mechanisms for addressing unsatisfactory performance, in contrast to measurement systems which have the effect of isolating the individual from the team effort. These are important elements of a successful management style in a professional environment where productivity improvement is much less a matter of working harder than it is of working smarter.

Human resource management is the single most important dimension of performance for the Ombudsman.

INVESTIGATIVE TECHNIQUE

Investigative technique is the central technical skill employed within the Office. It is through investigation that the facts of an individual case are discerned and the basis for the complaint assessed. The Office has recruited experts from the police and related communities to provide specialized knowledge in investigation, and to lay a foundation for the training of other personnel in investigative skills. This technical base is of great underlying importance to the capability of the Office to satisfy complaints. Because it is more art than science, it emphasizes the importance of the supervisory function in developing and maintaining competence within the Office, and it emphasizes the central role in the management of the Office of those holding managerial responsibilities for the investigative units.

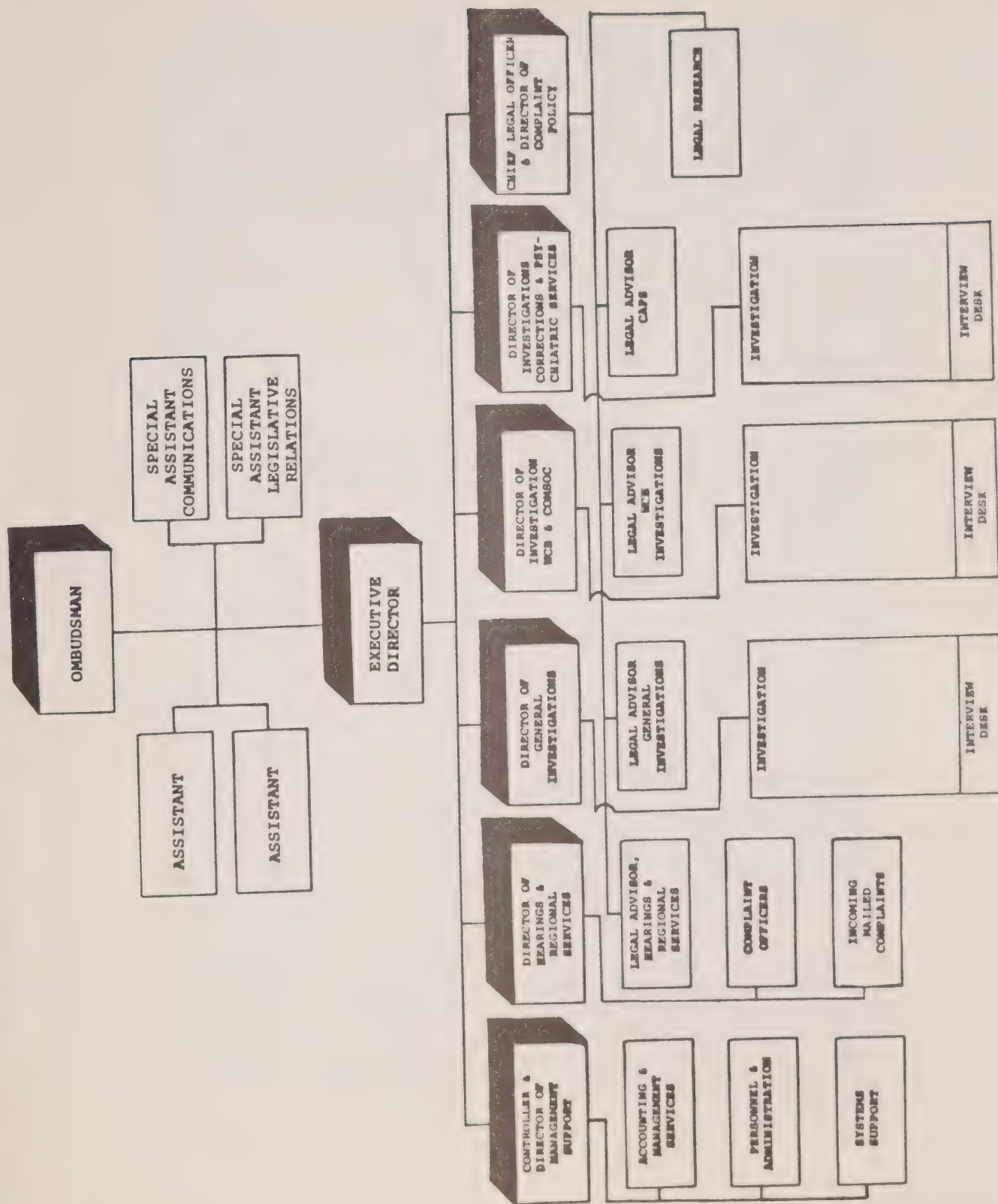
LEGAL TECHNOLOGY

The procedures of the Office are circumscribed by the law, and legal specialists provide a core technology in the operation of the Office. "Technology" is used here in its literal sense -- that of the practical art. The law provides the basis for determining the jurisdiction of the Office with respect to a given complaint, it defines the avenues of recourse open to the complainant, and it specifies the actions the Ombudsman may take in seeking satisfaction of the complaint. Within the Office, legal interpretations have led to guidelines which focus the efforts of investigators in addressing the facts of the case. Legal interpretations are required at several junctures in the proceedings of an investigation as well. While this technology is highly specialized, the organization of the Office must provide a way in which legal skills are readily available to investigators.

SYSTEMS TECHNOLOGY

Electronic methods are becoming increasingly important to the Office, particularly in word processing. Memory typewriters and related equipment are being absorbed into the procedures of the Office to simplify paperwork, to assure quality and to provide efficiency in the processing of large volumes of documents. This is a trend which will intensify. Indeed, there are advances in electronics which favour large scale automation of otherwise manual tasks, and these advances are just now becoming practical on an extensive scale. We are of the view that the systems technology of word processing offers the basis for very substantial productivity improvement over the next five years. There is potential in the flexibility of this technology to maintain individual service while, at the same time, taking advantage of large scale automation.

We recommend that the coordinated introduction of word processing systems be afforded a high priority in the administration of the Office during the next two years, and that competitive proposals from two or more alternative suppliers be sought immediately to that end.



AN ORGANIZATION PLAN FOR THE ONTARIO OMBUDSMAN

The foregoing elements emerged as important in the process of our review of the Office, and were introduced to senior officials of the Office during a two-day workshop to review our findings. These elements, along with a synthesis of the findings of our interviews, formed the basis of an evaluation of a proposed organization plan. On the basis of that joint evaluation, we have revised the proposal and recommend the structure portrayed in Exhibit 7. Its elements can be described in the following way.

FRAMEWORK

We recommend an organization plan which incorporates an Executive Director as Chief Operating Officer for the Ontario Ombudsman. This recommendation clearly preserves the role of the Ombudsman as Chief Executive Officer, but provides a focal point for efficient administration of the Office.

This division of responsibilities is important for several reasons. We have observed, and our study has confirmed, that the administrative responsibilities of the Ombudsman are onerous to the point of overload. Currently, there are 17 positions reporting directly to the Ombudsman, and this supervisory load is inconsistent with the external responsibilities carried by him. In some respects, the Ombudsman's leadership and public responsibilities are analogous to those of a minister of the Crown. And public administration has long found it necessary to provide ministers with permanent administrative heads to oversee the implementation of policy. Furthermore, the administration of a service organization of more than 100 persons requires coordinated attention to the processes of management. In the future, this administrative burden will be of even greater importance in view of the productivity improvement objectives which the Office must adopt to remain within the financial boundaries afforded it.

We recommend, as well, that the investigation function receive dominance in the managerial structure of the Office. This is because of the central importance of investigations to complaint satisfaction, and because of the central importance of management of the Office's skilled human resources. Our proposal envisages three Directorates of Investigation, plus a special purpose Directorate aimed at meeting the needs of rural Ontario as well as providing a focal point for the receipt of complaints.

Two specialized Directorates are recommended to support the management process in a technical way. A Chief Legal Officer and Director of Complaint Policy provides the Office with the means to control its investigative efforts within legal boundaries. A Controller and Director of Management Support provides the Office with the means to control its investigations within approved managerial and financial policy, and provides the technical leadership for introduction and improvement of that systems technology which will underlie productivity improvement.

As Chief Operating Officer, the Executive Director is seen as chairing a Management Committee comprised of the six Directors for the purposes of ensuring efficient and effective management of the operations of the Office, and for developing, recommending, monitoring and controlling the administrative policies which will govern the day to day functioning of the Office.

The Chief Legal Officer and Director of Complaint Policy is seen as chairing those processes described as *Case Conference* where the Ombudsman's policy and intent with respect to the handling of complaints is developed and maintained.

The components of the organization plan in Exhibit 7 can be described as follows.

THE EXECUTIVE

The Ombudsman's Group

The Ombudsman's Group includes those functions, offices and persons which directly support the Ombudsman. The composition of the Group is very largely a function of the preference of the Ombudsman and may be larger or smaller depending upon his administrative style. In Exhibit 7, the Group is shown as including Assistants and the functions of Legislative Relations and Communications. In our view, Legislative Relations is clearly a function which should relate directly to the Ombudsman, particularly during the early years of the Office while the relationships to the Provincial Parliament are in the process of being established. The positioning of Communications is optional, and is included in the Ombudsman's Group because it has been used primarily as a strategic device in establishing the relationship of the Ombudsman with the several dimensions of the Ontario community. Communications has important tactical support dimensions, as well, particularly with respect to hearings held throughout Ontario and in support of client relationships in the several investigative directorates. In time, it might report to the Executive Director in a staff role.

The Executive Director

The Executive Director is seen as directing administering and coordinating the activities of the Office of the Ombudsman in accordance with the policies, objectives and intent established by the Ombudsman. He assists the Ombudsman in the development of policies and goals that cover operations, personnel and financial performance.

His specific responsibilities include the following:

- . As Chairman, he guides and directs members of the Management Committee in the development and delivery of appropriate services to the citizens of Ontario.
- . He directs the development and preparation of short-term and long-range plans and budgets based upon the broad organizational goals of the Office and recommends their adoption to the Ombudsman.
- . He maintains a sound plan of organization, and recommends changes in organization as required by the development and growth of the Office.
- . He directs the development and installation of procedures and controls to maintain communication and adequate flow of information and to ensure adequate management control and direction of the Office.
- . He develops and establishes operating policies consistent with the Ombudsman's broad policies and objectives and intent; and ensures their adequate execution.
- . He appraises and evaluates the results of over-all operations and reports results to the Ombudsman.
- . He directs the development and establishment of adequate and equitable personnel policies throughout the Office. He ensures that the interests and welfare of staff as individuals are preserved.
- . He ensures sound relationships with key personnel in external public and private sector organizations.
- . He ensures that all Office activities and operations are carried out in compliance with those laws and regulations governing the Office.

THE OPERATING DIRECTORATES

The operating directorates contain the great proportion of personnel in the Office and are responsible for the efficient and effective handling of complaints from the public. There are several considerations which we feel to be of particular importance in guiding the organization of these groups. First of all, there must be the recognition that the Directors of these groups carry the primary responsibility for management within the Office. This is because the Office's managerial challenge emphasizes the development and deployment of human resources. These, therefore, are managerial jobs, as distinct from case oriented roles. They need to focus on the development of the human resource capacity within the Office. Secondly, we would stress the need to retain a flatness to the organization, without steep hierarchies, as a pattern consistent with professional and quasi-professional tasks. And thirdly, we see the need to ensure that the Management Committee be dominated by officials who carry responsibility for the management of the investigative case load and for the human resources of the office.

For these reasons, we recommend that four operating Directorates, each headed by a Director, be formed. There are several considerations involved in grouping case activity among the four, including balance of case load, balance in terms of the numbers of staff, specialization of function, specialization of clientele, and visibility of function to the Ontario community. Our workshop with senior Ombudsman officials examined these considerations in detail and proposed a number of alternatives for differentiating Directorates. We have taken this advice into account in recommending the four which follow. The pattern recommended is based largely on the experience of the Office and reflects what has proven to be a useful basis for differentiating the investigative task and specializing the roles of Directorates.

This basic differentiation in responsibility needs to be moderated in its administration through personnel policies which foster the rotation of personnel, on a carefully planned basis, from one Directorate to another. Such policies are essential to ensuring balanced training and development of personnel.

Directorate of Investigations: Corrections and Psychiatric Services

This Directorate is responsible for all complaints regarding institutions where citizens are incarcerated. The methods and procedures used here are highly specialized and depend upon a continuity of relationships between officers of the Ombudsman and those of the institution involved.

While these institutions span more than a single Policy Field within the provincial administration, we are of the view that the Office of the Ombudsman should cultivate relationships with the Province which take account of the way in which Ministries are grouped. Accordingly, we recommend that the Director of Investigations: Corrections and Psychiatric Services carry liaison responsibility for the Justice Policy Field.

We define as "liaison" the objective of establishing and maintaining effective relationships between the Directorate and the senior personnel involved in the Ministries with whom the Directorate interfaces. Effectiveness would be judged by the avoidance of a negative adversary atmosphere between the Office of the Ombudsman and the Ministry.

Directorate of Investigations: Workmen's Compensation Board and Community and Social Services

There are strong similarities in clientele between WCB and COMSOC and, while the WCB generates an onerous case load for the Office, there is a distinct advantage in the Office specializing to encompass both.

The Director of Investigations: WCB & COMSOC is to carry liaison responsibility for the Social development Policy Field.

Directorate of General Investigations

This Directorate is to be responsible for complaints not falling specifically within CAPS or WCB & COMSOC. As such, it is a large and highly diversified directorate without the benefits of specialization in technique or clientele. Of the three investigative directorates, it is the most onerous from a managerial point of view, but less specialized in a technical sense. Because of the managerial dimensions of this job, we do not recommend that the Director maintain liaison responsibility for a Policy Field.

Directorate of Hearings and Regional Services

This Directorate has three special responsibilities. First, to serve those parts of the Province which are not easily accessible to the Office of the Ombudsman in Toronto. In doing so, the Directorate is to have responsibility for the hearings which the Ombudsman conducts across

Ontario. As opposed to having its own staff of investigators, personnel would be drawn from other Directorates. This provides the opportunity for specialized investigators to broaden their understanding of the various regions in the Province.

Second, the Directorate would, through its Complaint Officers group, initially screen all incoming complainant phone calls or personal visits. The screening is for the sole purpose of determining which Directorate's Interview desk should handle the complaint. A complaint that cannot be quickly allocated to one of the three Investigative Directorates would be referred to Legal Research for handling. The Complaint Officers Group is seen to be a small (2-3) person group, and would not be required to write up Interview Summaries or make any referrals to the complainant.

The Interview desk in each Directorate would be manned by Investigators on a rotating duty roster basis. Interviews would then be conducted in a manner that best meets the needs of that Investigative Directorate. Further, it would be possible in most cases to assign cases to those Investigators conducting the initial interview, thus giving the Investigators a sense of "ownership" of the complaint, but more importantly, it would allow the complainant to identify with one person within the Office.

The third special responsibility of this Directorate relates to incoming mail. Currently, incoming mail is handled by assistants to the Ombudsman, and routed to the appropriate officials. This has had the advantage of providing direct control by the Ombudsman over the flow of cases. We are of the view, however, that this function might be better assigned to the Director of Hearings and Regional Services, providing him with complete access to all incoming cases regardless of the method by which they are received.

TECHNICAL DIRECTORATES

The two technical directorates are as follows:

Chief Legal Officer and Director of Complaint Policy

The Chief Legal Officer and Director of Complaint Policy is to be responsible for developing the way in which legal interpretation is

applied to complaints. He has direct responsibility for developing and maintaining the Office's legal capacity. For this purpose he maintains the legal research group and assigns Legal Advisors to each of the operating directorates. While these assigned Advisors are of his staff and he has responsibility for their career development, they are to operate as integral components of the management processes in their host directorates. This is a matrix concept of organization which has been found to be highly beneficial in the deployment of technical skills. It is a difficult organizational pattern to operate, however, because it carries with it the concept of two superiors. With direct attention to the potential difficulties of divided loyalties, we are confident that this matrix concept can provide high quality legal support for the Office.

Controller and Director of Management Services

Because the Office of the Ombudsman has a high degree of independence, the role of the Controller and Director of Management Support is a much more comprehensive responsibility than that of a comparable position in a government ministry. Indeed, this position is more analogous to the role of controllership in industry. This is a technical directorate which has responsibilities for both control and service. The control dimensions of the role need specific recognition, because they provide the Executive Director, and through him the Ombudsman, with the assurance that expense control, administrative practices, and budgetary planning are consistent with generally accepted practices in the public sector, and are consistent with the Ombudsman's intent for service quality and financial responsibility.

The Directorate includes an Accounting and Management Services group with responsibilities for budgeting, accounting and management information. It groups together the administrative responsibilities for personnel with administrative support for the Office as a whole. This grouping recognizes that the responsibility for personnel resides within the other directorates, but provides a basis for technical support to this line function.

A high priority for this Directorate lies in the Systems Support group, which is to carry responsibility for the systematic introduction of word processing capability throughout the Office. This is a major support activity, given the importance of productivity improvement in the next several years. With this modernization will come increased use of the computer, as an operational support, as an accounting and management information tool, and as a means for evaluating alternative strategies.

MANAGEMENT INTEGRATION

The plan of organization outlined in Exhibit 7 offers the Ombudsman the ability to provide professional management to differentiated and specialized investigative and related tasks. It does this by featuring broad management responsibilities which are delegated to four operating directorates, and places primary emphasis in these managerial roles on the development of the human resources of the organization.

It provides technical support to the operating directorates through specialized responsibilities for legal services and management services which, taken together, provide the operating directorates with the capacity needed to address the goals of complaint satisfaction.

The plan of organization provides the Office with two clear responsibilities for control. The first, through the Chief Legal Officer and Director of Complaint Policy, provides the conduit through which Ombudsman intent in complaint policy is channeled to guide the operating directorates --through assigned legal advisors and through the process of case conferences. The second, through the Controller and Director of Management Support, defines the administrative and financial controls which ensure that the Office performs in accordance with plans and good practice. Technical support to the operating directorates is also assured through these specialized directorates, in the form of competence in legal advice, in administrative advice, and in systems support.

Within this plan, the Executive Director is in a position to coordinate the activities of the Office, integrating the specialized support units with the decentralized responsibilities for management. Teamwork at this level will be key to the success of the plan, and the Executive Director will need the full support of the Ombudsman in bringing the pieces together. The Management Committee provides the forum for developing this teamwork and for resolving the conflicts which inevitably arise between those responsible for technical matters and

those responsible for results. We recommend that the Executive Director undertake to address this team building effort in the context of a medium term plan -- perhaps three years. A management-by-objectives approach would be a useful theme in this regard, featuring case load and unit costing forecasts, projected budgetary constraints, productivity objectives, systems improvement objectives, and quality indicators. From these would flow targets to be achieved by each Directorate, and objectives in terms of staff deployment and staff development. As this planning exercise develops, areas requiring policy definition will emerge. These can be isolated and delegated for staff work within the Management Committee. Specific policy proposals can thereby be brought forward for Management Committee endorsement, and recommendation to the Ombudsman for approval.

In this way, clarity of the objectives of the Office will emerge, and emerge in the context of more precise operating policy. This clarity and precision can be communicated through the management structure leading to a broadly shared sense of purpose within the Office.

IMPLEMENTATION

In our original proposal of November, 1977 and our revised proposal of March 17, 1978, we emphasized the need to approach the problems of organization for effectiveness in a participative manner. This approach has been initiated by the Office of the Ombudsman -- as manifested by:

- the identification of a Management Study Committee, two members of which were elected by non-supervisory personnel in the Office;
- the involvement of approximately 40% of staff in individual and small group meetings with the consultants to identify the opportunities for improvement in the Office's operations;
- the involvement of all members of senior management in a two-day workshop in which opportunities for improvement were reviewed against a proposed new organizational structure.

This involvement has had the effect of giving a strong signal to staff that the organization has started to move on a new course. We believe that the process of future changes in the Office must reflect continued involvement of staff if the Office is to achieve its objective while maintaining its reputation of being sensitive to complainants' needs.

Implementation of the proposed structure must, therefore, reflect care and sensitivity while at the same time, the pace of change must reflect an appropriate sense of urgency.

Traditionally, the public sector has not implemented organization change effectively. Involvement with those most seriously affected has not been planned. Rather implementation by edict has been the normal strategy. This has left staff confused, concerned and more importantly has caused staff to demonstrate stiff resistance to new structures and methods. Further, such a strategy fails to tap the creativity and innovativeness that is inherent in working levels of the organization.

In presenting the revised organizational structure for the Office of the Ombudsman, a great many questions of detail have been left unanswered on purpose. We believe that such details are best left to those personnel involved and skilled in the Office. Our recommended strategy is one that is based on a process of change through dialogue and subsequent shifts in attitude. We believe our strategy to be not only more effective but more efficient in terms of time and cost.

We believe it essential to recognize that organizational change and organizational behaviour are synonymous. Structure is only a means to bring about desired behaviour. The desired behaviour will require changes in attitude. Consequently recognition should be given to the fact that it will take time to achieve the desired behaviour among the various levels of staff in the Office.

It is essential, however, that during the period of transition the quality of service now being provided to citizens of Ontario be maintained.

PRINCIPLES OF ORGANIZATION CHANGE

A CONCRETE SIGNAL

Any organization needs a clear and unmistakable signal that change is underway. This is particularly true in the Office, given the perceptions of staff regarding previous structural realignments. We believe it essential that a number of key steps be taken to indicate to all staff that the new proposals have been reviewed by management and have been accepted by management and, therefore, are serious. Evidence of support from the Ombudsman and his management group is important.

OPEN COMMUNICATION ON THE CONCEPT

It is essential that key staff understand the objectives underlying the proposed structure. Such understanding is best achieved through open and candid communications. Effective communications will also allay skepticism and relieve the anxiety of uncertainty.

CAREFULLY PLANNED CHANGE

The planning of change must recognize the following factors:

- . staff need a sense of pace of change, particularly if the changes are going to impact on their own work life;
- . the rate of change must be both challenging and achievable;
- . expectations of staff must be appropriately tempered;
- . some staff will need to be freed to carry out the needed development of detail and subsequent implementation.

PARTICIPATIVE CHANGE

The degree of commitment to the change in organization will be strongly influenced by the degree of involvement by staff. Involvement, however, should be tempered with the realism that not all personnel

have the skills necessary to effectively participate on all matters. Care needs to be taken that competency (which is spread throughout all levels of the Office) be a prerequisite to involvement in such tasks as developing the details necessary to support the proposed organizational design.

EMPHASIS ON GROUP PROCESS

The active involvement of the Management Study Committee and Directors during the course of this assignment and their support in principle of the proposed organization design has reinforced our belief in the strategy of group process. The challenge of developing detailed support systems for the recommended structure can best be met by continuing this strategy.

STAGES OF ORGANIZATION CHANGE

For perspective, we forward a timetable outlining the major stages to put the process of organization change into motion:

STAGE I - A CONCRETE SIGNAL

1. Announcement by the Ombudsman to all staff, in a general meeting, of the acceptance of the report. Copies of the report to be given to each member of staff.
2. Ombudsman announces the following appointments:
 - . Executive Director
 - . The Three Investigative Directors
 - . Director of Hearings and Regional Services
 - . Chief Legal Officer & Director of Complaint Policy
 - . Controller and Director of Management Support

STAGE II - OPEN COMMUNICATION ON THE CONCEPT

Staff would be given the opportunity to attend information meetings chaired by members of the Management Study Committee. Questions of clarification regarding the report would be answered.

STAGE III - CAREFULLY PLANNED CHANGE

1. The Management Committee, chaired by the Executive Director, meets for a two day session to identify, prioritize and plan the implementation program for the next six months. The results of this meeting, in the form of recommendations, would be forwarded by the Executive Director to the Ombudsman for his approval.
2. Among the issues to be considered:
 - a) Establishing the function of "Interview Desk" in each of the three Investigative Directorates, including the development (if deemed necessary) of new interview formats that would better assist the Investigator in resolving the complaints received.

- b) Defining the new role of Information Officers and developing a training program for their revised functions, if deemed necessary.
- c) Allocating legal staff to the various Directorates as indicated in the proposed organization structure.
- d) Establishing personnel policies and procedures relating to the employment, transfer, promotion and discipline of staff.
- e) Establishing appropriate timing for review of job descriptions and subsequent evaluation as a result of new or revised responsibilities.
- f) Establishing procedures for case conferences including attendance, timing, frequency, case loads, etc.
- g) Establishing procedures for hearings across the Province including frequency, geographic location, duration, seconding of appropriate legal and investigative staff, etc.
- h) Developing criteria for the establishment of a Management Information System, consistent with the theme expressed in the Report, that will enable Directors to determine the effectiveness and efficiency of their subordinate group.
- i) Instituting a review of word processing needs across the office by outside suppliers, for subsequent recommended installation of new equipment.

STAGE IV - PARTICIPATIVE CHANGE

1. The Implementation Plan, developed by the Management Committee and approved by the Ombudsman, would be communicated to all staff. In addition, where projects were identified, small task teams, comprised of knowledgeable personnel from all levels, would be created.
2. The Executive Director would be responsible for ensuring that task teams were following their predetermined plans of action and met their objectives on time.

APPENDIX A

ALTERNATIVE FINANCIAL SIMULATIONS

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0 %
10. Annual Change in non-Jurisdictional Case Load = 0.0 %

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3208	4223	4116	107
1980	0	962	3465	4427	4296	130
1981	0	1039	3742	4781	4486	294
1982	0	1122	4041	5164	4686	477
1983	0	1212	4365	5577	4895	681

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = +3 %
10. Annual Change in non-Jurisdictional Case Load = +3 %

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3281	4296	4116	180
1980	0	962	3625	4587	4296	290
1981	0	1039	4005	5044	4486	557
1982	0	1122	4426	5548	4686	862
1983	0	1212	4892	6104	4895	1208
* Fiscal Year ending March 31						

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = -3.0%
10. Annual Change in non-Jurisdictional Case Load = -3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3135	4150	4116	34
1980	0	962	3309	4272	4296	(24)
1981	0	1039	3494	4533	4486	46
1982	0	1122	3690	4812	4686	126
1983	0	1212	3897	5109	4895	213

* Fiscal Year ending March 31

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = -3.0%
10. Annual Change in non-Jurisdictional Case Load = 0.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3149	4164	4116	48
1980	0	962	3339	4302	4296	5
1981	0	1039	3542	4581	4486	94
1982	0	1122	3758	4880	4686	194
1983	0	1212	3987	5200	4895	304
* Fiscal Year ending March 31						

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0%
10. Annual Change in non-Jurisdictional Case Load = -3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3194	4209	4116	93
1980	0	962	3435	4397	4296	100
1981	0	1039	3694	4733	4486	246
1982	0	1122	3973	5096	4686	409
1983	0	1212	4274	5486	4895	591

* Fiscal Year ending March 31

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = +3 %
10. Annual Change in non-Jurisdictional Case Load = 0.0 %

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3267	4282	4116	166
1980	0	962	3594	4556	4296	259
1981	0	1039	3954	4993	4486	507
1982	0	1122	4352	5474	4686	788
1983	0	1212	4790	6002	4895	1106
* Fiscal Year ending March 31						

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0%
10. Annual Change in non-Jurisdictional Case Load = +3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4129	4129	3
1979	124	891	3222	4237	4116	121
1980	0	962	3496	4458	4296	161
1981	0	1039	3793	4832	4486	345
1982	0	1122	4116	5238	4686	552
1983	0	1212	4467	5697	4895	783

* Fiscal Year ending March 31

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

- 577 -

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = +3.0%
10. Annual Change in non-Jurisdictional Case Load = -3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3253	4268	4116	152
1980	0	962	3564	4526	4296	229
1981	0	1039	3906	4946	4486	459
1982	0	1122	4284	5406	4686	720
1983	0	1212	4700	5912	4895	1016
* Fiscal Year ending March 31						

APPENDIX D - LETTER TO MR. JAMES RENWICK, Q.C.
DATED MARCH 18, 1977

 The Ombudsman | Ontario

SUITE 600

65 QUEEN STREET WEST, TORONTO, ONTARIO

M5H 2M5

TELEPHONE (416) 362-7331

March 18, 1977

Mr. James Renwick, Q.C.
Chairman of the
Select Committee on the Ombudsman
Room 207 North Wing
Legislative Building
Queen's Park
Toronto, Ontario

Dear Mr. Renwick:

You have asked me to give a statement to the Select Committee detailing the position I have taken regarding a complaint against certain members of my staff by Mr. Patrick Reid, Member of the Provincial Parliament for the Constituency of Rainy River.

My investigation into Mr. Reid's complaint has been completed and the result of it has been communicated to him by my letter of March 18th, 1977. Since he wrote both to the Premier and the Select Committee on the Ombudsman, I am sending a copy of my letter to the Premier and to the Select Committee as well. A copy is enclosed.

As I indicated to you in our telephone conversation prior to your departure on vacation, and as I outlined to the Select Committee on Monday, March 14th, and subsequently to counsel for the Committee, Mr. John Bell, my position is simply that the Select Committee on the Ombudsman lacks jurisdiction to deal with the matter. It is clear that the Ombudsman, appointed by the Lieutenant-Governor in Council on the address of the Assembly, is answerable to the Legislature, which would have the power to consider a complaint of this nature. The legislation which created the Ombudsman, and which was approved by all Members of the Assembly, establishes that it is the Legislature which maintains control over the Ombudsman, and this is as it should be. Accordingly, the Select Committee on the Ombudsman is not the proper forum for such consideration.

Mr. James Renwick, Q.C.
Chairman of the Select Committee on the Ombudsman

It is well established that a Select Committee possesses only the authority derived by delegation from the House which appointed it. The scope of the Committee's authority is defined by the order by which the Committee was appointed - this is termed the order of reference - and the Select Committee must confine itself to these limits. Erskine May, in his Parliamentary Practice, 18th edition at page 620, indicates that:

"A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference), and the deliberations or inquiries of the committee must be confined within the limits of the order of reference. But when a Bill is committed, or referred, to a select committee, the Bill is itself the order of reference, and the inquiries and deliberations of the committee must be confined to the bill and amendments relevant to the subject-matter thereof. The interpretation of the order of reference of a select committee is a matter for the committee."

Arthur Beauchesne in his Rules and Forms of the House of Commons of Canada, 4th edition, also states that a select committee can consider only matters committed to it by the House, and is not at liberty to depart from its order of reference. The Select Committee would clearly be in error if it were to consider the complaint raised by Mr. Reid under the authority conferred upon it by the existing order of reference.

As you know, the Select Committee on the Ombudsman was created on the motion of the Premier, seconded by the Leader of the Opposition on July 15th, 1976. It came about as a direct result of the report of my opinion and reasons therefor together with my recommendations with respect to the North Pickering Project which was made to the Minister of Housing last June. When my report was rejected by the Minister of Housing I commenced a series of meetings with the Premier pursuant to section 22(4) of The Ombudsman Act. While these discussions were in progress, the Legislature which had been prorogued for the summer, recommenced its sittings for the purpose of debating Bill 127, but it was not anticipated that the House would be in session for long. It was then agreed upon between the Premier and me that a select committee of the Legislature, representing all political parties in the same proportions as they are represented in the House, should

Mr. James Renwick, Q.C.
Chairman of the Select Committee on the Ombudsman

be appointed to consider my report and recommendations in the North Pickering matter.

The precise motion passed by the House on July 15th was as follows:

"Ordered, That a select committee of this House be appointed to review from time to time the reports of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the committee deems appropriate; reports and recommendations of the committee to be placed on the order paper for discussion after presentation.

And that the select committee have authority to sit during recesses in the interval between Sessions and have power to employ such staff as it deems necessary and to call for persons, papers and things and to examine witnesses under oath, and the Assembly does command and compel the attendance before the said select committee of such persons and a production of such papers and things as the committee may deem necessary for any of its proceedings and deliberations for which the Honourable the Speaker may issue his warrant or warrants."

The foregoing constituted the order of reference of the Select Committee until December 16th, 1976, when on motion by Mr. Welch, seconded by Mr. Renwick, the Assembly passed a further motion authorizing the Select Committee to formulate general rules for the guidance of the Ombudsman in the exercise of his function under the Act. The precise wording of the motion was as follows:

"Ordered, That the terms of reference of the Select Committee appointed on July 15th, 1976, to review from time to time the reports of the Ombudsman as they become available, be amended to give the Committee authority to formulate from time to time, as the Committee deems necessary, pursuant to s. 16(1) of The Ombudsman Act, 1975, general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act."

As you know, section 16 of The Ombudsman Act provides as follows:

"16(1) - The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act.

Mr. James Renwick, Q.C.
Chairman of the Select Committee on the Ombudsman

(2) All rules made under this section shall be deemed to be regulations within the meaning of The Regulations Act.

(3) Subject to this Act and any rules made under this section, the Ombudsman may determine his procedures."

Originally, under the authority of this section, the Legislature created the Select Committee on Guidelines for the Ombudsman on October 29th, 1975, on the motion of the Attorney General, the Honourable Roy McMurtry, seconded by Mr. Vernon Singer, M.P.P. for Wilson Heights. Mr. Singer became Chairman of the Committee and its other members were Messrs. Grossman, Lawlor, Hodgson, Norton, Reid (Rainy River) and Renwick. A summary of the activities of this Committee and of its report to the Legislature which appeared in Hansard for December 11th, 1975, appears in my first Annual Report as Appendix "A" between pages 567 and 570 inclusive. A copy of the Appendix is also appended hereto.

You will see that in the report of the Select Committee to the House, it was suggested that, inter alia, "a permanent committee of the Legislature should be established immediately so that it may review from time to time the following matters:

- (a) the reports of the Ombudsman as they become available from time to time,
- (b) the estimates of the Ombudsman, and
- (c) the actions or the lack of action taken by those persons referred to in the Ombudsman's reports, and report in connection with these matters to the Legislature from time to time."

The motion of July 15th, 1976 and the motion of December 16th, 1976, together set out the total jurisdiction of the Select Committee on the Ombudsman. The Assembly has transferred to the Select Committee on the Ombudsman its powers under section 16(1) of The Ombudsman Act to, "make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act", which rules shall be deemed to be regulations within the meaning of The Regulations Act.

The function of the Ombudsman is clearly set out in section 15(1) of The Ombudsman Act which provides that, "the function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the

Mr. James Renwick, Q.C.

Chairman of the Select Committee on the Ombudsman

administration of a governmental organization and affecting any person or body of persons in his or its personal capacity." The Ombudsman is further required to report and make recommendations following his investigation of a matter described in section 15(1), as well as to report annually to the Legislature.

The rule-making power of the Select Committee on the Ombudsman as entrusted to it by the Legislature clearly relates only to the exercise of the Ombudsman's functions under the Act. He is empowered to employ officers and other employees, pursuant to section 8(1) of the Act, subject to the approval of the Lieutenant-Governor in Council. He is also empowered to lease premises and acquire equipment and supplies pursuant to section 9 of The Ombudsman Act and he has already done so. These powers are conferred upon the Ombudsman to enable him to carry out his functions of investigation and report; by no stretch of the imagination do these powers constitute the Ombudsman's functions under the Act.

The matter you wish to take under consideration arises as a result of the following circumstances:

On February 17th, last, I received a telephone call from Patrick Reid, M.P.P., complaining about the appearance on television in either Atikokan or Fort Frances or both by Gary Speranzini of my office. Mr. Reid's complaint was based on the fact that Mr. Speranzini had appeared on television with a Mr. Gordon Thomson, who has been nominated as a Progressive Conservative candidate for the Rainy River constituency for the next provincial election. I gave my undertaking to Mr. Reid that I would enquire into the matter immediately, and within a short period of time was able to contact Mr. Speranzini. After hearing his explanation I asked him to get in touch with Mr. Reid immediately to discuss the matter with him. After this, both Mr. Reid and I were unsuccessful in our efforts to get in touch with each other.

Mr. Reid subsequently wrote to me on February 23rd, 1977, and indicated that he had written to the Premier as well on the same date. A third letter on the matter was addressed to you in your capacity as Chairman of the Select Committee on the Ombudsman on February 25th, 1977. Copies of the three letters are attached to this letter. You will note that in his letter to you he asks that the Committee investigate matters relating to Mr. Speranzini, as well as to Mr. Ken Cavanagh, Director of Communications with my office, and their involvement in the television interviews with Mr. Thomson in Mr. Reid's constituency of Rainy River.

Mr. James Renwick, Q.C.
Chairman of the Select Committee on the Ombudsman

Mr. Reid's suggested remedies are as follows:

(a) In his letter to the Select Committee:

"I would request that the Committee investigate the following matters:

Where the arrangements in fact made by Mr. Cavanagh? If so, was he aware that he had arranged for a nominated candidate for the next provincial election to interview a representative of the Ombudsman? If this has occurred, I would suggest that the function of the Ombudsman and the necessity for strict non-partisanship is clearly not understood by his staff, and perhaps he should be replaced.

Why did Mr. Speranzini agree to a second interview with Mr. Thompson [sic] after he had announced on the air that he was the Progressive Conservative candidate during the first interview. If Mr. Speranzini is this insensitive to the position of non-partisanship that he holds, I suggest that he be removed."

(b) In Mr. Reid's letter to me:

"I can only suggest that because of the incompetence and insensitivity of the people involved in this particular instance that they should be replaced. They obviously are not capable of carrying out their responsibilities as representatives of your office."

(c) In Mr. Reid's letter to the Premier he did not suggest any possible remedies.

Upon receipt of Mr. Reid's letter to me on February 28th 1977, I wrote him a letter dated March 1st, 1977, in which I informed him that I had an investigation under way into the matter that he raised. A copy of my letter is also attached, as is the reply dated March 7th, 1977 from the Premier to Mr. Reid, a copy of which I received on March 11th, 1977.

The investigation into Mr. Reid's allegation that the Progressive Conservative candidate in Rainy River used the Office of the Ombudsman for blatant political purposes and that the credibility and non-partisanship of the Office of the Ombudsman had been seriously undermined in his area is now completed, as I have already indicated. I have reviewed the tape of the television appearance in Fort Frances; the tape of the first interview in

Mr. James Renwick, Q.C.
Chairman of the Select Committee on the Ombudsman

Atikokan was erased by the station management. I have also reviewed a tape made of Mr. Thomson, Mr. Reilly and Ms. Makarenko of the television station's staff and these tapes are available should you wish to see them, as are transcripts of the audio for both tapes. Mr. Gordon Thomson has made himself available at the office of the Ombudsman and has given a full statement on the matter. Messrs. Cavanagh and Speranzini have, on my instructions, been questioned by a member of my legal staff as well as by myself. I have written to Mr. Reid to advise him of the scope and result of my investigation. As already noted, a copy of my letter to Mr. Reid is enclosed.

It is my view that an important matter is raised by virtue of the Select Committee purporting to deal with Mr. Reid's complaint. It is to be remembered that the circumstances which led to Mr. Reid's complaint did not arise as a result of the performance by the Ombudsman or any member of his staff of my functions as outlined in the Act. The Ombudsman Act envisages a function and a functionary totally free from political interference. It is my perception that if your Select Committee is to become involved in the Reid matter, or any similar matter emanating from other Members of the Legislature or indeed from the general public in the future, the operations of the Office of the Ombudsman would be seriously impaired and the structure of the office as it currently exists radically altered.

The Legislature has two arms: one political and the other non-political. You and your colleagues in the House are its political arm. The Ombudsman, together with the Office of the Clerk, the Office of the Director of Administration and the Commission on Election Contributions and Expenses belong to the non-political arm. The two should not become intertwined or interlocked if the Ombudsman concept as it is understood in Ontario is to continue. I believe that the principle of impartiality in the future operation of the Office of the Ombudsman would be threatened if the Select Committee involves itself in a complaint such as the one raised by Mr. Reid. It would involve the Committee in the day-to-day operation of the Ombudsman's office and, in effect, such an action would negate the intent of the Legislature when it unanimously adopted The Ombudsman Act and open wide the door to the creation of a far different Ombudsman function in Ontario. As an officer of the Legislature, the Ombudsman is responsible to the Legislature and he files his reports to the Legislature. The Ombudsman must remain free from the control of any body with the exception of the Legislature, which alone has the responsibility to dismiss him for cause.

I know of no other legislative Ombudsman where the political arm of the Legislature has attempted to assert a right to exercise the kind of control over the operation of the Ombudsman's

Mr. James Renwick, Q.C.
Chairman of the Select Committee on the Ombudsman

office that your involvement in the Reid complaint would entail. In fact, should the Committee so involve itself, it would be taking the first step towards the creation of an Ombudsman operation similar to the role of the Committee on Petitions which exists in the Federal Republic of West Germany. That Committee, which I have studied and visited, and which has its headquarters in Bonn, is composed of twenty-seven members of the Bundestag. It has its own staff which investigates complaints, and through that Committee, recommendations are forwarded to individual Ministries or to the Bundestag with respect to citizen complaints.

Had the Members of the Ontario Legislature intended that the Ontario Ombudsman operate along those lines, they would surely have drafted legislation to reflect that desire. Such an intention is, however, not reflected in The Ombudsman Act as it currently exists.

It is, of course, open to the Committee to suggest to the Legislature that it change The Ombudsman Act and transfer the function of the Ombudsman to the political arm of the Legislature as in Germany. It may be that the people of Ontario would prefer that arrangement to the present system. I certainly have no evidence to suggest that the people are so wedded to the present system that they could not be persuaded by you and your colleagues to accept a new approach. Neither am I aware that there is any serious opposition to the existing structure of the Office.

I have taken a very serious view of Mr. Reid's allegations against my staff members and the results of my investigation confirm this serious view. Mr. Reid can now accept the results of my investigation as I have communicated them to him and treat the matter as closed or, if he so wishes, he can report any remaining dissatisfaction to the Speaker of the Assembly who presumably would then have the right to consider whether the matter should be referred to the Procedural Affairs Committee of the House.

As I indicated to you at the close of proceedings before the Select Committee on Monday, March 14th, as well as on an earlier occasion, and as I have subsequently made clear to counsel to the Committee, I am fully prepared to consider any contrary position the Committee may wish to take and to reconsider my position in light of such a submission. So far this has not been forthcoming.

Yours faithfully,

AM/KRC
Enclosures

Arthur Maloney, Q.C.

APPENDIX E - THE OMBUDSMAN ACT, 1975

BILL 86

1975

An Act to provide for an Ombudsman to investigate Administrative Decisions and Acts of Officials of the Government of Ontario and its Agencies

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "governmental organization" means a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof;

(b) "minister" means a member of the Executive Council.

2. There shall be appointed, as an officer of the Legislature, an Ombudsman to exercise the powers and perform the duties prescribed by this Act.

3. The Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

Appoint-
ment

4.—(1) Subject to this Act, the Ombudsman shall hold office for a term of ten years, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

Tenure of
office and
removal

(2) The Ombudsman may be reappointed for a further term or terms but shall retire upon attaining the age of sixty-five years.

Reappoint-
ment
and
retirement

5.—(1) The Ombudsman shall devote himself exclusively to the duties of his office and shall not hold any other office under the Crown or engage in any other employment.

Nature of
employment

(2) *The Public Service Act* and *The Public Service Superannuation Act* do not apply to the Ombudsman.

Idem
R.S.O. 1970,
cc. 386, 387

- Salary **6.**—(1) The Ombudsman shall be paid a salary to be fixed by the Lieutenant Governor in Council.
- Idem (2) The salary of the Ombudsman shall not be reduced except on address of the Assembly.
- Expenses (3) The Ombudsman is entitled to be paid reasonable travelling and living expenses while absent from his ordinary place of residence in the exercise of his functions under this Act.
- Pension
1973, c. 152 (4) Part II of *The Legislative Assembly Retirement Allowances Act, 1973*, except sections 15 and 16, subsection 5 of section 18 and clause *a* of subsection 2 of section 19, applies, *mutatis mutandis*, to the Ombudsman in the same manner as if he were a member of the Legislative Assembly and for the purpose,
- (a) “average annual remuneration” means the average annual salary of the Ombudsman during any five years of his service, which years need not be consecutive, during which his salary was highest; and
- (b) “remuneration” means the salary of the Ombudsman.
- Temporary
Ombudsman **7.** In the event of the death or resignation of the Ombudsman while the Legislature is not in session or if he is unable or neglects to perform the functions of his office, the Lieutenant Governor in Council may appoint a temporary Ombudsman, to hold office for a term of not more than six months, who shall, while in such office, have the powers and duties and perform the functions of the Ombudsman and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix.
- Staff **8.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Ombudsman may employ such officers and other employees as the Ombudsman considers necessary for the efficient operation of his office and may determine their salary and remuneration and terms and conditions of employment.
- Benefits (2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,
- (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;

(b) plans for group life insurance, medical-surgical insurance or long-term income protection; and

(c) the granting of leave of absence,

apply to the permanent and full-time employees of the Ombudsman and where such benefits are provided for in regulations made under *The Public Service Act*, the Ombudsman, or any person authorized in writing by him, may exercise the powers and duties of a Minister or Deputy Minister or of the Civil Service Commission under such regulations. R.S.O. 1970, c. 386

(3) *The Public Service Superannuation Act* applies to the permanent and full-time probationary staff of the Ombudsman as though the Ombudsman were a commission designated by the Lieutenant Governor in Council under section 27 of that Act. Employees' superannuation benefits
R.S.O. 1970, c. 387

9. The Ombudsman may lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his office. Premises and supplies

10. The salary of the Ombudsman and the expenses required for the operation of his office are payable, until the 31st day of March, 1976, out of the Consolidated Revenue Fund and thereafter out of moneys appropriated therefor by the Legislature. Salary and expenses

11. The accounts and financial transactions of the office of the Ombudsman shall be audited annually by the Provincial Auditor. Audit

12. The Ombudsman shall report annually upon the affairs of his office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. Annual report

13.—(1) Before commencing the duties of his office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with subsection 2, disclose any information received by him as Ombudsman. Oath of office and secrecy

(2) The Ombudsman may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations. Disclosure

Application of Act	<p>14. This Act does not apply,</p> <p>(a) to judges or to the functions of any court; or</p> <p>(b) to deliberations and proceedings of the Executive Council or any committee thereof.</p>
Function of Ombudsman	<p>15.—(1) The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity.</p>
Investigation on complaint	<p>(2) The Ombudsman may make any such investigation on a complaint made to him by any person affected or by any member of the Assembly to whom a complaint is made by any person affected, or of his own motion.</p>
Powers paramount	<p>(3) The powers conferred on the Ombudsman by this Act may be exercised notwithstanding any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.</p>
Decisions not reviewable	<p>(4) Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission,</p> <p>(a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired;</p> <p>(b) of any person acting as legal adviser to the Crown or acting as counsel to the Crown in relation to any proceedings.</p>
Application to S.C.O. to determine jurisdiction	<p>(5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.</p>
Guidance rules	<p>16.—(1) The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act.</p>

(2) All rules made under this section shall be deemed to be regulations within the meaning of *The Regulations Act*. Idem
R.S.O. 1970,
c 410

(3) Subject to this Act and any rules made under this section, the Ombudsman may determine his procedures. Procedures

17.—(1) Every complaint to the Ombudsman shall be made in writing. Mode of
complaint

(2) Notwithstanding any provision in any Act, where any letter written by an inmate of any provincial correctional institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school or facility. To be
forwarded

18.—(1) If, in the course of the investigation of any complaint within his jurisdiction, it appears to the Ombudsman, Ombudsman
may
refuse to
investigate
complaint

- (a) that under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not he has availed himself of it; or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman, or, if in his opinion, Idem

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where the Ombudsman decides not to investigate or further investigate a complaint he shall inform the complainant in writing of that decision, and may if he thinks fit state his reasons therefor. Complainant
to be
informed

Proceedings of Ombudsman **19.—**(1) Before investigating any matter, the Ombudsman shall inform the head of the governmental organization affected of his intention to make the investigation.

Investigation to be in private (2) Every investigation by the Ombudsman under this Act shall be conducted in private.

Where hearing necessary (3) The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but, if at any time during the course of an investigation, it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any governmental organization or person, he shall give to that organization or person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

May consult minister (4) The Ombudsman may in his discretion, at any time during or after any investigation, consult any minister who is concerned in the matter of the investigation.

Must consult minister (5) On the request of any minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a minister, the Ombudsman shall consult that minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection 1 or 2 of section 22.

Breach of duty or misconduct (6) If, during or after an investigation, the Ombudsman is of opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any governmental organization, he may refer the matter to the appropriate authority.

Evidence **20.—**(1) The Ombudsman may from time to time require any officer, employee or member of any governmental organization who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person.

Examination under oath (2) The Ombudsman may summon before him and examine on oath,

(a) any complainant;

(b) any person who is an officer or employee or member of any governmental organization and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection 1; or

(c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection 1,

and for that purpose may administer an oath.

(3) Subject to subsection 4, no person who is bound by ^{Secrecy} the provisions of any Act, other than *The Public Service Act*, ^{R.S.O. 1970, c. 386} to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any com- ^{Idem}plainant, any person to whom subsection 3 applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement.

(5) Every person has the same privileges in relation to the ^{Privileges} giving of information, the answering of questions, and the production of documents and things as witnesses have in any court.

(6) Except on the trial of any person for perjury in respect ^{Protection} of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(7) A person giving a statement or answer in the course ^{Idem under R.S.C. 1970, c. E-10} of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of his right to object to answer any question under section 5 of the *Canada Evidence Act*.

(8) No person is liable to prosecution for an offence against ^{Prosecution} any Act, other than this Act, by reason of his compliance with any requirement of the Ombudsman under this section.

Fees

(9) Where any person is required by the Ombudsman to attend before him for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he were a witness in the Supreme Court, and the provisions of any Act, regulation or rule in that behalf apply accordingly.

Disclosure
of certain
matters not
to be
required

21.—(1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or thing,

- (a) might interfere with or impede investigation or detection of offences;
- (b) might involve the disclosure of the deliberations of the Executive Council; or
- (c) might involve the disclosure of proceedings of the Executive Council or of any committee of the Executive Council, relating to matters of a secret or confidential nature, and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or thing to be produced.

Idem

(2) Subject to subsection 1, the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman.

Procedure
after
investiga-
tion

22.—(1) This section applies in every case where, after making an investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation,

- (a) appears to have been contrary to law;
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) was based wholly or partly on a mistake of law or fact; or
- (d) was wrong.

(2) This section also applies in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Ombudsman is of opinion, Ombudsman's report and recommendations

- (a) that the matter should be referred to the appropriate authority for further consideration;
- (b) that the omission should be rectified;
- (c) that the decision or recommendation should be cancelled or varied;
- (d) that any practice on which the decision, recommendation, act or omission was based should be altered;
- (e) that any law on which the decision, recommendation, act or omission was based should be reconsidered;
- (f) that reasons should have been given for the decision or recommendation; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate governmental organization, and may make such recommendations as he thinks fit and he may request the governmental organization to notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations and the Ombudsman shall also send a copy of his report and recommendations to the minister concerned.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fit. Where no appropriate action taken

(5) The Ombudsman shall attach to every report sent or made under subsection 4 a copy of any comments made by or on behalf of the governmental organization affected. Idem

Complainant to be informed of result of investigation **23.**—(1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under subsection 3 of section 22, and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

Idem (2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Proceedings not to be questioned or to be subject to review **24.** No proceeding of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court.

Proceedings privileged **25.**—(1) No proceedings lie against the Ombudsman, or against any person holding any office or appointment under the Ombudsman, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

Idem (2) The Ombudsman, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Act.

Idem (3) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Power of entry of premises **26.**—(1) For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any governmental organization and inspect the premises and carry out therein any investigation within his jurisdiction.

Notice of entry (2) Before entering any premises under subsection 1, the Ombudsman shall notify the head of the governmental organization occupying the premises of his purpose.

Notice to desist (3) The Attorney General may by notice to the Ombudsman exclude the application of subsection 1 to any specified premises or class of premises if he is satisfied that the exercise of the powers mentioned in subsection 1 might be prejudicial to the public interest.

(4) Where a notice is given under subsection 3 and in the opinion of the Ombudsman it is necessary to take an action apparently prevented by the notice, the Ombudsman may apply to a judge of the High Court for an order setting aside the notice in respect of such action and, where the judge is satisfied that such action would not be prejudicial to the public interest, he may make the order.

Order
of judge

27.—(1) The Ombudsman may in writing delegate to any person holding any office under him any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act.

Delegation
of powers

(2) Every delegation under this section is revocable at will and no such delegation prevents the exercise by the Ombudsman of any power so delegated.

Delegation
is revocable

(3) Every such delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit.

Restrictions
and
conditions

(4) In the event that the Ombudsman by whom any such delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

Continuing
effect of
delegation

(5) Any person purporting to exercise any power of the Ombudsman by virtue of a delegation under this section shall, when required so to do, produce evidence of his authority to exercise the power.

Evidence of
obligation

28. Every person who,

Offences
and
penalties

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the performance of his functions under this Act; or
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his functions under this Act,

is guilty of an offence and liable on summary conviction to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both.

Rights
under Act
do not
affect
other rights,
etc.

29. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

Commence-
ment

30. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

31. This Act may be cited as *The Ombudsman Act, 1975*.

